S. 1351. A bill to amend the Sikes Act to establish a mechanism by which outdoor recreation programs on military installations will be accessible to disabled veterans, military dependents with disabilities, and other persons with disabilities; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

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

S. Con. Res. 58. A concurrent resolution expressing the sense of Congress over Russia's newly passed religion law; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROWNBACK (for himself, Mr. SMITH of Oregon, Mr. LUGAR, Mr. HAGEL, Mr. MCCAIN, Mr. HELMS, and Mr. BYRD):

S. 1344. A bill to amend the Foreign Assistance Act of 1961 to target assistance to support the economic and political independence of the countries of South Caucasus and Central Asia; to the Committee on Foreign Relations.

THE SILK ROAD STRATEGY ACT OF 1997

Mr. BROWNBACK. Mr. President, I am introducing the Silk Road Strategy Act of 1977. This is an overarching policy between the countries of the South Caucasus and Central Asia, which includes the countries of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Those are not common names to most Americans, but the area of the world that they are around, the Caspian Sea, I think, is going to become far more common knowledge to many Americans, as there is 4 trillion dollars worth of known oil and gas in the region.

The region is reaching out to us. They are seeking to put off the Russian imperialism that has been in the region for years and seeking to get away from Iranian influence in the area.

Thus, we are putting forward this Silk Road strategy as an active and positive role in reviving the economies of this region of the world and to building them as major forces.

I think the United States has a vital political, social and economic interest in the region, and we need to act now rather than later. I don't think our window of opportunity in working with these countries as they seek freedom and yearn to be free and build opportunity for their people is long. Probably within the next 3 years, they are going to be making courses and decisions that will decide the long-term fate of the people of this region.

They seek to be united with the United States. I ask, overall, that my colleagues look at this potential opportunity, at this bill and support the Silk Road Strategy Act of 1997. It is a key interest area for us and our future.

This bill is aimed at focusing the attention of U.S. policy on the need to play an active and positive role in reviving the economies of these parts of the ancient Silk Road which was once the economic lifeline of Central Asia and the South Caucasus and the main transportation corridor to Europe and the West.

The United States has vital political, social, and economic interests there and they need to be acted on now, before it is too late. These countries are at an historic crossroad: They are independent for the first time in almost a century, located at the juncture of many of today's major world forces and they are all rich in natural resources. They are emerging from almost a century of plunder by a Communist regime which, while it actively drained their resources, put little back. They now find themselves free to govern themselves, and they are looking west.

The very fact that they have little experience of independence and that their economies are essentially starting from scratch, leaves them in a precarious situation, which is all the more precarious because of their geographic location: consider this: They are placed between the Empire from which they recently declared independence and an extremist Islamic regime to the south—both of which have a strong interest in exerting economic and political pressure upon them.

These countries are very important to us:

They are a major force in containing the spread northward of anti-western Iranian extremism. Though Iranian activity in the region has been less blatant than elsewhere in the world, they are working very hard to bring the region into their sphere of influence and economic control.

The Caspian Sea basin contains proven oil and gas reserves which, potentially, could rank third in the world after the Middle East and Russia and exceed $4 trillion in value. Investment in this region could ultimately reduce United States dependence on oil imports from the volatile Persian Gulf and could provide regional supplies as an alternative to Iranian sources.

Strong market economies near Russia and China can only help to positively influence these two countries on their rocky path toward freedom.

Finally, this region offers us a historic opportunity to spread freedom and democratic ideals. After years of fighting communism in this region, the doors are open to promote institutions of democratic government and to create the conditions for the growth of pluralistic societies, including religious tolerance.

The single best way to consolidate our goals in the region is to promote regional cooperation and policies which will strengthen the sovereignty of each nation. Each of these countries has its own individual needs; however, many of the problems in the region overlap and are shared, and a number of common solutions and approaches can apply. This bill encourages this goal.

All of the Silk Road countries are currently seeking U.S. investment and encouragement, and they are looking to us to assist them in working out regional political, economic and strategic cooperation. This bill authorizes assistance in all these areas.

Given the correct infrastructure development, this region is and will continue to become, a key transit point that will ultimately link Central Asia with the West—as it did in the time when caravans traveled along these same routes in the Middle Ages.

Opportunities to assist this infrastructure development abound—taking advantage of these opportunities could not only cement political ties, but commercial and economic ones as well.

The United States should do everything possible to promote this sovereignty and independence, as well as encourage solid diplomatic and economic cooperation between these nations.

In order to do this we need to take a number of positive steps: We should be strong and active in helping to resolve local conflicts; we should be providing economic assistance to provide positive incentives for international private investments and increased trade; we should be assisting in the development of infrastructure necessary for communities, transportation, and energy and trade on an East-West axis; we should be providing security assistance to help fight the scourge of narcotics trafficking, the spread of weapons of mass destruction and the spread or organized crime; and—perhaps the most important of all—we should be supplying all the assistance possible to strengthen democracy, tolerance and the development of civil society. These are the best ways to insure these countries remain independent and strong and that they move toward open and free government.

Mr. President, the time to focus and act in this region is now. We have the opportunity to help these countries rebuild from the ground up and to encourage them to continue their strong independent stances, especially in relation to Iran and the spread of extremist, anti-Western fundamentalism, which is one of the most clear and present dangers facing the United States today. I hope my colleagues will join me and support his bill.

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. 1344

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 ''Silk Road Strategy Act of 1997''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The ancient Silk Road, once the economic lifeline of Central Asia and the South Caucasus, traversed much of the territory now within the countries of Armenia, Azerbaijan, Georgia, Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

(2) Economic interdependence spurred mutual cooperation among the peoples along the Silk Road and restoration of the historic relationships and economic ties between those peoples is an important element of ensuring their sovereignty as well as the success of democratic and market reforms.

(3) The development of strong political and economic ties between countries of the South Caucasus and Central Asia and the West will foster stability in the region.

(4) The development of open market economies and open democratic systems in the countries of the South Caucasus and Central Asia will provide positive incentives for international private investment, increased trade, and other forms of commercial interactions with the rest of the world.

(5) The Caspian Sea Basin, overlapping the territory of the countries of the South Caucasus and Central Asia, contains proven oil and gas reserves that may exceed $4,000,000,000,000 in value.

(6) The region of the South Caucasus and Central Asia will produce oil and gas in sufficient quantities to reduce the dependence of the United States on energy from the volatile Persian Gulf region.

(7) United States foreign policy and international assistance should be narrowly targeted to support the economic and political independence of the countries of the South Caucasus and Central Asia.

SEC. 3. POLICY OF THE UNITED STATES.

It shall be the policy of the United States in the countries of the South Caucasus and Central Asia—

(1) to promote and strengthen independence, sovereignty, and democratic government;

(2) to assist actively in the resolution of regional conflicts;

(3) to promote friendly relations and economic cooperation;

(4) to help promote market-oriented principles and practices;

(5) to assist in the development of the infrastructure necessary for communications, transportation, and energy and trade on an East-West axis in order to build strong international relations and commerce between those countries and the stable, democratic, and market-oriented countries of the Euro-Atlantic Community; and

(6) to support United States business interests and investments in the region.

SEC. 4. UNITED STATES EFFORTS TO RESOLVE CONFLICTS IN GEORGIA, AZERBAIJAN, AND TAJIKISTAN.

It is the sense of Congress that the President should use all diplomatic means practicable, including the engagement of senior United States Government officials, to press for an equitable, fair, and permanent resolution to the conflicts in Georgia and Azerbaijan and the civil war in Tajikistan.

SEC. 5. AMENDMENT OF THE FOREIGN ASSISTANCE ACT OF 1961.

Part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following new chapter:

"Chapter 12—Support for the Economic and Political Independence of the Countries of the South Caucasus and Central Asia

"SEC. 499. UNITED STATES ASSISTANCE TO PROMOTE RECONCILIATION AND RECOVERY FROM REGIONAL CONFLICTS.

''(a) PURPOSE OF ASSISTANCE.—The purposes of assistance under this section are—

''(1) to create the basis for reconciliation between belligerents;

''(2) to promote economic development in areas of the countries of the South Caucasus and Central Asia impacted by civil conflict and war; and

''(3) to encourage broad regional cooperation among countries of the South Caucasus and Central Asia that have been destabilized by internal conflicts.

''(b) AUTHORIZATION FOR ASSISTANCE.—

''(1) IN GENERAL.—To carry out the purposes of subsection (a), the President is authorized to provide humanitarian assistance and economic reconstruction assistance under this Act, and assistance under the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601 et seq.), to the countries of the South Caucasus and Central Asia to support the activities described in subsection (c).

''(2) DEFINITION OF HUMANITARIAN ASSISTANCE.—In this subsection, the term 'humanitarian assistance' means assistance to meet urgent humanitarian needs, in particular meeting needs for food, medicine, medical supplies and equipment, and clothing.

''(c) ACTIVITIES SUPPORTED.—Activities that may be supported by assistance under subsection (b) are limited to—

''(1) providing for the essential needs of victims of the conflicts;

''(2) facilitating the return of refugees and internally displaced persons to their homes; and

''(3) assisting in the reconstruction of residential and economic infrastructure destroyed by war.

''(d) POLICY.—It is the sense of Congress that the United States should, where appropriate, support the establishment of neutral, multinational peacekeeping forces to implement peace agreements reached between belligerents in the countries of the South Caucasus and Central Asia.

"SEC. 499A. ECONOMIC ASSISTANCE.

''(a) PURPOSE OF ASSISTANCE.—The purpose of assistance under this section is to foster the conditions necessary for regional economic cooperation in the South Caucasus and Central Asia.

''(b) AUTHORIZATION FOR ASSISTANCE.—To carry out the purpose of subsection (a), the President is authorized to provide technical assistance to the countries of the South Caucasus and Central Asia to support the activities described in subsection (c).

''(c) ACTIVITIES SUPPORTED.—Activities that may be supported by assistance under subsection (b) are limited to the development of the structures and means necessary for the growth of private sector economies based upon market principles.

''(d) POLICY.—It is the sense of Congress that the United States should—

''(1) assist the countries of the South Caucasus and Central Asia to develop laws and regulations that would facilitate the ability of those countries to join the World Trade Organization;

''(2) provide permanent nondiscriminatory trade treatment (MFN status) to the countries of the South Caucasus and Central Asia; and

''(3) consider the establishment of zero-to-zero tariffs between the United States and the countries of the South Caucasus and Central Asia.

"SEC. 499B. DEVELOPMENT OF INFRASTRUCTURE.

''(a) PURPOSE OF ASSISTANCE.—The purposes of assistance under this section are—

''(1) to develop the physical infrastructure necessary for regional cooperation among the countries of the South Caucasus and Central Asia; and

''(2) to encourage closer economic relations between those countries and the United States and other developed nations.

''(b) AUTHORIZATION FOR ASSISTANCE.—To carry out the purposes of subsection (a), the following types of assistance to the countries of the South Caucasus and Central Asia are authorized to support the activities described in subsection (c):

''(1) Activities by the Export-Import Bank to complete the review process for eligibility for financing under the Export-Import Bank Act of 1945.

''(2) The provision of insurance, reinsurance, financing, or other assistance by the Overseas Private Investment Corporation.

''(3) Assistance under section 661 of this Act (relating to the Trade and Development Agency).

''(c) ACTIVITIES SUPPORTED.—Activities that may be supported by assistance under subsection (b) are limited to promoting actively the participation of United States companies and investors in the planning, financing, and construction of infrastructure for communications, transportation, and energy and trade including highways, railroads, port facilities, shipping, banking, insurance, telecommunications networks, and gas and oil pipelines.

''(d) POLICY.—It is the sense of Congress that the United States representatives at the International Bank for Reconstruction and Development, the International Finance Corporation, and the European Bank for Reconstruction and Development should encourage lending to the countries of the South Caucasus and Central Asia to assist the development of the physical infrastructure necessary for regional economic cooperation.

"SEC. 499C. SECURITY ASSISTANCE.

''(a) PURPOSE OF ASSISTANCE.—The purpose of assistance under this section is to assist countries of the South Caucasus and Central Asia to secure their borders and implement effective controls necessary to prevent the trafficking of illegal narcotics and the proliferation of technology and materials related to weapons of mass destruction (as defined in section 2332a(c)(2) of title 18, United States Code), and to contain and inhibit transnational organized criminal activities.

''(b) AUTHORIZATION FOR ASSISTANCE.—To carry out the purpose of subsection (a), the President is authorized to provide the following types of assistance to the countries of the South Caucasus and Central Asia to support the activities described in subsection (c):

''(1) Assistance under chapter 5 of part II of this Act (relating to international military education and training).

''(2) Assistance under chapter 8 of this part of this Act (relating to international narcotics control assistance).

''(3) The transfer of excess defense articles under section 516 of this Act (22 U.S.C. 2321j).

''(c) ACTIVITIES SUPPORTED.—Activities that may be supported by assistance under subsection (b) are limited to assisting those countries of the South Caucasus and Central Asia in developing capabilities to maintain national border guards, coast guard, and customs controls.

''(d) POLICY.—It is the sense of Congress that the United States should encourage and assist the development of regional military cooperation among the countries of the South Caucasus and Central Asia through programs such as the Central Asian Battalion and the Partnership for Peace of the North Atlantic Treaty Organization.

"SEC. 499D. STRENGTHENING DEMOCRACY, TOLERANCE, AND THE DEVELOPMENT OF CIVIL SOCIETY.

''(a) PURPOSE OF ASSISTANCE.—The purpose of assistance under this section is to promote institutions of democratic government and to create the conditions for the growth of pluralistic societies, including religious tolerance.

''(b) AUTHORIZATION FOR ASSISTANCE.—To carry out the purpose of subsection (a), the

President is authorized to provide the following types of assistance to the countries of the South Caucasus and Central Asia.

''(1) Technical assistance for democracy building.

''(2) Technical assistance for the development of nongovernmental organizations.

''(3) Technical assistance for development of independent media.

''(4) Technical assistance for the development of the rule of law.

''(5) International exchanges and advanced professional training programs in skill areas central to the development of civil society.

''(c) ACTIVITIES SUPPORTED.—Activities that may be supported by assistance under subsection (b) are limited to activities that directly and specifically are designed to advance progress toward the development of democracy.

''(d) POLICY.—It is the sense of Congress that the Voice of America and RFE/RL, Incorporated, should maintain high quality broadcasting for the maximum duration possible in the native languages of the countries of the South Caucasus and Central Asia.

''SEC. 499E. INELIGIBILITY FOR ASSISTANCE.

''(a) IN GENERAL.—Except as provided in subsection (b), assistance may not be provided under this chapter for a country of the South Caucasus or Central Asia if the President determines and certifies to the appropriate congressional committees that the country—

''(1) is engaged in a consistent pattern of gross violations of internationally recognized human rights;

''(2) has, on or after the date of enactment of this chapter, knowingly transferred to another country—

''(A) missiles or missile technology inconsistent with the guidelines and parameters of the Missile Technology Control Regime (as defined in section 11B(c) of the Export Administration Act of 1979 950 U.S.C. App. 2410b(c); or

''(B) any material, equipment, or technology that would contribute significantly to the ability of such country to manufacture any weapon of mass destruction (including nuclear, chemical, and biological weapons) if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of such weapons;

''(3) has supported acts of international terrorism;

''(4) is prohibited from receiving such assistance by chapter 10 of the Arms Export Control Act or section 306(a)(1) and 307 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5604(a)(1), 5605); or

''(5) has initiated an act of aggression against another state in the region after the date of enactment of the Silk Road Strategy Act of 1997.

''(b) EXCEPTION TO INELIGIBILITY.—Notwithstanding subsection (a), assistance may be provided under this chapter if the President determines and certifies in advance to the appropriate congressional committees that the provision of such assistance is important to the national interest of the United States.

''SEC. 499F. ADMINISTRATIVE AUTHORITIES.

''(a) ASSISTANCE THROUGH GOVERNMENTS AND NONGOVERNMENTAL ORGANIZATIONS.—Assistance under this chapter may be provided to governments or through nongovernmental organizations.

''(b) USE OF ECONOMIC SUPPORT FUNDS.—Except as otherwise provided, any funds that have been allocated under chapter 4 of part II for assistance for the independent states of the former Soviet Union may be used in accordance with the provisions of this chapter.

''(c) TERMS AND CONDITIONS.—Assistance under this chapter shall be provided on such terms and conditions as the President may determine.

''(d) SUPERSEDING EXISTING LAW.—The authority to provide assistance under this chapter supersedes any other provision of law, except for—

''(1) this chapter;

''(2) section 634A of this Act and comparable notification requirements contained in sections of the annual foreign operations, export financing, and related programs Act; and

''(3) section 1341 of title 31, United States Code (commonly referred to as the ''Anti-Deficiency Act''), the Congressional Budget and Impoundment Control Act of 1974, the Balanced Budget and Emergency Deficit Control Act of 1985, and the Budget Enforcement Act of 1990.

''SEC. 499G. DEFINITIONS.

''In this chapter:

''(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

''(2) COUNTRIES OF THE SOUTH CAUCASUS AND CENTRAL ASIA.—The term 'countries of the South Caucasus and Central Asia' means Armenia, Azerbaijan, Georgia, Kazakstan, Kyrgystan, Tajikistan, Turkmenistan, and Uzbekistan.''.

SEC. 6. ANNUAL REPORT.

Beginning one year after the date of enactment of this Act, and annually thereafter, the President shall submit a report to the appropriate congressional committees—

(1) identifying the progress of United States foreign policy to accomplish the policy identified in section 3;

(2) evaluating the degree to which the assistance authorized by chapter 12 of part I of the Foreign Assistance Act of 1961, as added by section 5 of this Act, was able to accomplish the purposes identified in those sections; and

(3) recommending any additional initiatives that should be undertaken by the United States to implement the policy and purposes contained in this Act.

SEC. 7. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) COUNTRIES OF THE SOUTH CAUCASUS AND CENTRAL ASIA.—The term ''countries of the South Caucasus and Central Asia'' means Armenia, Azerbaijan, Georgia, Kazakstan, Kyrgystan, Tajikistan, Turkmenistan, and Uzbekistan.

By Mr. ROCKEFELLER (for himself and Ms. COLLINS):

S. 1345. A bill to amend titles XVIII and XIX of the Social Security Act to expand and clarify the requirements regarding advance directives in order to ensure that an individual's health care decisions are complied with, and for other purposes; to the Committee on Finance.

THE ADVANCE PLANNING AND COMPASSIONATE CARE ACT OF 1997

Mr. ROCKEFELLER. Mr. President, I am extremely pleased to be introducing the Advance Planning and Compassionate Care Act of 1997 with my colleague from Maine, Senator COLLINS. I have already had the great pleasure of working with Senator COLLINS on legislation earlier this year to improve the portability of Medigap insurance policies. We were successful in getting a good portion of that legislation enacted this year, so I am very pleased to have another opportunity to work with Senator COLLINS on another set of issues that are so important to millions of Medicare beneficiaries and the rest of America.

We introduce this legislation to ask Congress to take action that responds directly and humanely to the needs of elderly and others during some of their most difficult and often traumatic time of their lives. The United States deserves to be extremely proud of the medical advances and efforts that have extended our people's life expectancy and our ability to overcome disease and medical setbacks. But we need to take some additional, tangible steps to also make progress in the practices and care that affect our citizens when they ultimately face death or the real possibility of death. Our bill provides some of those steps.

While this is a difficult area to discuss, it is a very real area for Americans year in and year out. This is legislation designed to respond to pressing needs of patients, their family members, and their health care providers, and I hope that Congress will adopt these steps in the next year.

In view of the debate this year on physician assisted suicide and from my own personal experiences, I have spent considerable time delving into the concerns and dilemmas that face patients, their family members, and their physicians when confronted with death or the possibility of dying. In almost all such difficult situations, people are not thinking about physician-assisted suicide. The needs and dilemmas that confront them have much more to do with the kind of care and information that they need, often desperately.

The legislation we are introducing today builds on bipartisan legislation enacted in 1990, called the Patient Self-Determination Act. That legislation was championed by my former colleague from Missouri, Senator Danforth. I held a subcommittee hearing on Senator Danforth's legislation and it became very clear that the lack of a national policy on advance directives was not acceptable. As a result of that bill, hospitals, skilled nursing facilities, home health agencies, hospice programs, and HMO's participating in the Medicaid and Medicare programs must provide every adult receiving medical care with written information concerning patient involvement in their own treatment decisions. The health care institutions must also document in the medical record whether the patient has an advance directive. In addition, States were required to write description of their State laws concerning advance directives.

Mr. President, at the time of that bill's enactment, we realized that it was only the first step toward increasing public awareness and addressing

some very difficult issues related to end-of-life care. As a result of that legislation, a growing number of Americans do have advance directives. But recent studies have found that the majority of Americans have not discussed end-of-life issues with their families or their physicians and have not relayed their treatment preferences either verbally or in writing.

There is also an increasing awareness that physicians and many other health care providers are uncomfortable addressing end-of-life issues and are even apparently unwilling to respect their patient's preferences in some cases. Another complicating factor is the great variation that exists among State laws, and the lack of a legal requirement that an advance directive written in one State be respected in another State.

Mr. President, the legislation we are introducing today focuses on the need to improve end-of-life care for Medicare beneficiaries. It addresses the need to develop models of compassionate care and quality measures for end-of-life care in the Medicare Program, and it will encourage individuals to have more open communication with family members and health care providers concerning their preferences for end-of-life care.

The first section of the Advance Planning and Compassionate Care Act strengthens the previously enacted Patient Self Determination Act in the following ways.

First, it requires that every Medicare beneficiary have the opportunity to discuss health care decisionmaking issues with an appropriately trained professional, when he or she makes a request. This measure would help make sure that patients and their families have the ability to discuss and address concerns and issues relating to their care, including end-of-life care, with a trained professional. Many health care institutions already have teams of providers to address difficult health care decisions and some even mediate among patients, families, and providers. In smaller institutions, social workers, chaplains, nurses, or other trained professional could be made available for consultation.

Second, our bill requires that a person's advance directive be placed in a prominent part of the medical record. Often advance directives can not even be found in the medical record, making it more difficult for providers to respect patients' wishes. It is essential that an individual's advance directive be readily available and visible to anyone involved in their health care.

Third, it will assure that an advance directive valid in one State will be valid in another State. At present, portability of advance directives from State to State is not assured. Such portability can only be guaranteed through Federal legislation.

The second part of our bill directs the Secretary of Health and Human Services to advise Congress on an approach to adopting the provisions of the Uniform Health Care Decisions Act for Medicare beneficiaries. The Uniform Health Care Decisions Act was developed by the Uniform Law Commissioners, a group with representation from all States that has been in existence for over 100 years. The Uniform Health Care Decisions Act includes all the important components of model advance directive legislation. A great deal of legal effort went into its development, with input by all the States and approval by the American Bar Association. Medicare beneficiaries deserve a uniform approach to advance directives, especially since many move from one State to another while in the Medicare Program. The tremendous variation in State laws that currently exists only adds to the confusion of health care professionals and their patients.

Just this month, a study done by Dr. Jack Wennberg at Dartmouth University documented the tremendous variation that exists in the medical care that Medicare beneficiaries receive in the last few months of their lives. This sort of analysis highlights that patient preferences have little to do with the sort of care patients receive in their final months of life. Where you live determines the sort of medical care you will receive more so than what you might prefer.

The third part of this legislation would encourage the development of models for end-of-life care for Medicare beneficiaries who do not qualify for the Medicare hospice benefit but still have chronic, debilitating and ultimately fatal illnesses. The tremendous advances in medicine and medical technology over the past 30 to 50 years have resulted in a greatly lengthened life expectancy for Americans, as well as vastly improved functioning and quality of life for the elderly and those with chronic disease. Many of these advances have been made possible by federally financed health care programs, such as the Medicare Program that assures access to high quality health care for all elderly Americans. Medicare has also funded much of the development of technology and a highly skilled physician workforce through support of medical education and academic medical centers. These advances have also created major dilemmas in addressing terminal or potentially terminal disease, as well as a sense of loss of control by many with terminal illness.

I believe it is time for Medicare to help seniors have access to compassionate, supportive, and pain free care during prolonged illnesses and at the end of life. As we begin to discuss restructuring the Medicare Program for the long term, this will be one of my primary goals. Our legislation instructs the Department of Health and Human Services to develop appropriate quality measures and models of care for persons with chronic, debilitating disease, including the very frail elderly who will comprise an increasing number of Medicare beneficiaries. Our bill also sets up a consumer hotline that can provide the American public with information on the legal, medical, and ethical issues related to advance directives and medical decisionmaking.

Mr. President, I am learning more and more about the importance of educating health care providers and the public that chronic, debilitating, terminal disease need not be associated with pain, major discomfort, and loss of control. We can control pain and treat depression, as well as the other causes of suffering during the dying process. We must now apply this knowledge to assure all Americans appropriate end-of-life care. And to make sure that Medicare beneficiaries are able to receive the most effective medicine to control their pain, Medicare's coverage rules would be expanded under our bill to include coverage for self-administered pain medications.

Under current law, Medicare generally does not pay for any outpatient prescription drugs. The only pain medication paid for by the Medicare Program are those drugs that are administered by a portable pump. The pump is covered by Medicare as durable medical equipment and the drugs used with that pump are also covered. Our bill would expand coverage to include self-administered pain medications, for example oral drugs or transdermal patches. These alternatives are as effective in pain relief and, most obviously, a much more comfortable way for patients to receive their pain medication.

Mr. President, much also needs to be done to assure that all health care providers have the appropriate training to use what is already known about supportive care. The public must be educated and empowered to discuss these issues with family members as well as their own physicians so that each individual's wishes can be respected. More research is needed to develop appropriate measures of quality end-of-life care and incorporate these measures into medical practice in all health care settings. And finally, appropriate financial incentives must be present within Medicare, especially, to allow the elderly and disabled their choice of appropriate care at the end of life. Medicare's coverage policy should not be the sole determinate of the route that pain medication is administered.

To conclude, I am proud to offer this legislation with Senator COLLINS. We hope consideration of this bill will be an opportunity to take notice of the many constructive steps that can be taken to address the needs of patients and family members grappling with great pain and medical difficulties. During this time when physician assisted suicide obtains so many headlines, we are eager to call on Congress to turn to the alternative ways of providing help and relief to seniors and other Americans who only are interested in such alternatives.

I ask unanimous consent that a summary and a copy of the bill be printed in its entirety in the RECORD.

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

S. 1345

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 ''Advance Planning and Compassionate Care Act of 1997''.

SEC. 2. EXPANSION OF ADVANCE DIRECTIVES.

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) (as amended by section 4641 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 487)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting ''and if presented by the individual, to include the content of such advance directive in a prominent part of such record'' before the semicolon;

(B) in subparagraph (D), by striking ''and'' at the end;

(C) in subparagraph (E), by striking the period and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.''; and

(2) by adding at the end the following:

''(4)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider of services or a prepaid or eligible organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

''(B) Nothing in this paragraph shall be construed to authorize the administration, withholding, or withdrawal of health care unless it is consistent with the laws of the State in which an advance directive is presented.

''(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking ''in the individual's medical record'' and inserting ''in a prominent part of the individual's current medical record''; and

(ii) by inserting ''and if presented by the individual, to include the content of such advance directive in a prominent part of such record'' before the semicolon;

(B) in subparagraph (D), by striking ''and'' at the end;

(C) in subparagraph (E), by striking the period and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.''; and

(2) by adding at the end the following:

''(5)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider or organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

''(B) Nothing in this paragraph shall be construed to authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of the State in which an advance directive is presented.

''(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply to provider agreements entered into, renewed, or extended under title XVIII of the Social Security Act, and to State plans under title XIX of such Act, on or after such date (not later than 1 year after the date of the enactment of this Act) as the Secretary of Health and Human Services specifies.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 3. STUDY AND RECOMMENDATIONS TO CONGRESS ON ISSUES RELATING TO ADVANCE DIRECTIVE EXPANSION.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a thorough study regarding the implementation of the amendments made by section 2 of this Act.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a report to Congress that contains a detailed statement of the findings and conclusions of the Secretary regarding the study conducted pursuant to subsection (a), together with the Secretary's recommendations for such legislation and administrative actions as the Secretary considers appropriate.

SEC. 4. STUDY AND LEGISLATIVE PROPOSAL TO CONGRESS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a thorough study of all matters relating to the creation of a national, uniform policy on advance directives for individuals receiving items and services under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(2) MATTERS STUDIED.—The matters studied by the Secretary of Health and Human Services shall include issues concerning—

(A) the election or refusal of life-sustaining treatment;

(B) the provision of adequate palliative care including pain management;

(C) the portability of advance directives, including the cases involving the transfer of an individual from one health care setting to another;

(D) immunity for health care providers that follow the instructions in an individual's advance directive;

(E) exemptions for health care providers from following the instructions in an individual's advance directive;

(F) conditions under which an advance directive is operative;

(G) revocation of an advance directive by an individual;

(H) the criteria for determining that an individual is in terminal status; and

(I) surrogate decision making regarding end of life care.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a report to Congress that contains a detailed description of the results of the study conducted pursuant to subsection (a).

(c) CONSULTATION.—In conducting the study and developing the report under this section, the Secretary of Health and Human Services shall consult with physicians and other health care provider groups, consumer groups, the Uniform Law Commissioners, and other interested parties.

SEC. 5. DEVELOPMENT OF STANDARDS TO ASSESS END-OF-LIFE CARE.

The Secretary of Health and Human Services, through the Administrator of the Health Care Financing Administration, the Director of the National Institutes of Health, and the Administrator of the Agency for Health Care Policy and Research, shall develop outcome standards and measures to evaluate the performance of health care programs and projects that provide end-of-life care to individuals and the quality of such care.

SEC. 6. NATIONAL INFORMATION HOTLINE FOR END-OF-LIFE DECISIONMAKING.

The Secretary of Health and Human Services, through the Administrator of the Health Care Financing Administration, shall establish and operate directly, or by grant, contract, or interagency agreement, out of funds otherwise appropriated to the Secretary, a clearinghouse and 24-hour toll-free telephone hotline, to provide consumer information about advance directives, as defined in section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3)), and end-of-life decisionmaking.

SEC. 7. EVALUATION OF AND DEMONSTRATION PROJECTS FOR INNOVATIVE AND NEW APPROACHES TO END-OF-LIFE CARE FOR MEDICARE BENEFICIARIES.

(a) DEFINITIONS.—In this section:

(1) MEDICARE BENEFICIARIES.—The term ''medicare beneficiaries'' means individuals who are entitled to benefits under part A or eligible for benefits under part B of the medicare program.

(2) MEDICARE PROGRAM.—The term ''medicare program'' means the health care program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) EVALUATION OF EXISTING PROGRAMS.—

(1) IN GENERAL.—The Secretary, through the Administrator of the Health Care Financing Administration, shall conduct ongoing evaluations of innovative health care programs that provide end-of-life care to medicare beneficiaries who are seriously ill or who suffer from a medical condition that is likely to be fatal.

(2) REQUIREMENTS.—Evaluations conducted under this subsection shall include the following:

(A) Evidence that the evaluated program implements practices or procedures that result in improved patient outcomes, resource utilization, or both.

(B) A definition of the population served by the program and a determination as to how accurately that population reflects the total medicare beneficiaries in the area who are in need of services offered by the program.

(C) A description of the eligibility requirements and enrollment procedures for the program.

(D) A detailed description of the services provided to medicare beneficiaries served by the program and the utilization rates for such services.

(E) A description of the structure for the provision of specific services.

(F) A detailed accounting of the costs of providing specific services under the program.

(G) A description of any procedures for offering medicare beneficiaries a choice of services and how the program responds to the preferences of the medicare beneficiaries served by the program.

(H) An assessment of the quality of care and of the outcomes for medicare beneficiaries and the families of such beneficiaries served by the program.

(I) An assessment of any ethical, cultural, or legal concerns regarding the evaluated program and with the replication of such program in other settings.

(J) Identification of any changes to regulations, or of any additional funding, that would result in more efficient procedures or improved outcomes, for the program.

(3) EXTERNAL EVALUATORS.—The Secretary shall contract with 1 or more external evaluators to coordinate and conduct the evaluations required under this subsection and under subsection (c)(4).

(4) USE OF OUTCOME MEASURES AND STANDARDS.—An evaluation conducted under this subsection and subsection (c)(4) shall use the outcome standards and measures required to be developed under section 5 as soon as those standards and measures are available.

(c) DEMONSTRATION PROJECTS.—

(1) AUTHORITY.—The Secretary, through the Administrator of the Health Care Financing Administration, shall conduct demonstration projects to develop new and innovative approaches to providing end-of-life care to medicare beneficiaries who are seriously ill or who suffer from a medical condition that is likely to be fatal.

(2) APPLICATION.—Any entity seeking to conduct a demonstration project under this subsection shall submit to the Secretary an application in such form and manner as the Secretary may require.

(3) SELECTION CRITERIA.—

(A) IN GENERAL.—In selecting entities to conduct demonstration projects under this subsection, the Secretary shall select entities that will allow for demonstration projects to be conducted in a variety of States, in an array of care settings, and that reflect—

(i) a balance between urban and rural settings;

(ii) cultural diversity; and

(iii) various modes of medical care and insurance, such as fee-for-service, preferred provider organizations, health maintenance organizations, hospice care, home care services, long-term care, and integrated delivery systems.

(B) PREFERENCES.—The Secretary shall give preference to applications for demonstration projects that—

(i) will serve medicare beneficiaries who are dying of illnesses that are most prevalent under the medicare program, including cancer, heart failure, chronic obstructive respiratory disease, dementia, stroke, and progressive multifactorial frailty associated with advanced age; and

(ii) appear capable of sustained service and broad replication at a reasonable cost within commonly available organizational structures.

(4) EVALUATIONS.—Each demonstration project conducted under this subsection shall be evaluated at such regular intervals as the Secretary determines are appropriate. An evaluation of a project conducted under this subsection shall include the items described in subsection (b)(2) and the following:

(A) A comparison of the quality of care and of the outcomes for medicare beneficiaries and the families of such beneficiaries served by the demonstration project to the quality of care and outcomes for such individuals that would have resulted if care had been provided under existing delivery systems.

(B) An analysis of how ongoing measures of quality and accountability for improvement and excellence could be incorporated into the demonstration project.

(C) A comparison of the costs of the care provided to medicare beneficiaries under the demonstration project to the costs of that care if it had been provided under the medicare program.

(5) WAIVER AUTHORITY.—The Secretary may waive compliance with any requirement of titles XI, XVIII, and XIX of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq.) which, if applied, would prevent a demonstration project carried out under this subsection from effectively achieving the purpose of such a project.

(d) ANNUAL REPORTS TO CONGRESS.—

(1) IN GENERAL.—Beginning 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the quality of end-of-life care under the medicare program, together with any suggestions for legislation to improve the quality of such care under that program.

(2) SUMMARY OF RECENT STUDIES.—A report submitted under this subsection shall include a summary of any recent studies and advice from experts in the health care field regarding the ethical, cultural, and legal issues that may arise when attempting to improve the health care system to meet the needs of individuals with serious and eventually fatal illnesses.

(3) CONTINUATION OR REPLICATION OF DEMONSTRATION PROJECTS.—Beginning 3 years after the date of enactment of this Act, the report required under this subsection shall include recommendations regarding whether the demonstration projects conducted under subsection (c) should be continued and whether broad replication of any of those projects should be initiated.

(e) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) of such sums as are necessary for the costs of conducting evaluations under subsection (b), conducting demonstration projects under subsection (c), and preparing and submitting the annual reports required under subsection (d). Amounts may be transferred under the preceding sentence without regard to amounts appropriated in advance in appropriations Acts.

SEC. 8. MEDICARE COVERAGE OF SELF-ADMINISTERED MEDICATION FOR CERTAIN PATIENTS WITH CHRONIC PAIN.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) (as amended by section 4557 of the Balanced Budget Act (Public Law 105–33; 111 Stat. 463)) is amended—

(1) by striking ''and'' at the end of subparagraph (S);

(2) in subparagraph (T), by striking the period at the end and inserting ''; and''; and

(3) by inserting after subparagraph (T) the following:

''(U) self-administered drugs which may be dispensed only upon prescription and which are prescribed for the relief of chronic pain in patients with a life-threatening disease or condition;''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items and services furnished on or after June 1, 1998.

ADVANCE PLANNING AND COMPASSIONATE CARE ACT OF 1997—SUMMARY

More than 70 percent of the 2 million Americans expected to die this year will be over the age of 65. The Medicare and Medicaid programs pay for the majority of care at the end of life. Dr. Jack Wennberg, health researcher at Dartmouth University, recently documented the tremendous geographic variation that exists in end of life care provided to Medicare beneficiaries. The type of medical care a patient received in their last month of life was driven more by where a person lived than by personal preferences.

(1) BETTER INFORMATION AND COUNSELING

Current law: This bill builds on federal legislation (Patient Self-Determination Act) enacted in 1990 that requires health care facilities to distribute information on advance directives to their patients. Since passage of that legislation, there has been an increase in the number of individuals who have an advance directive but a recent Robert Wood Johnson study found that while 20 percent of hospitalized patients had an advance directive less than half had ever talked with any of their doctors about having a directive and only about one-third had their wishes documented in their medical record. Many people do not understand the importance of discussing their advance directives with family members and their health care provider. In addition, a 1994 survey found that only 5 out of 126 medical schools offered a separate, required course in end of life care. Other surveys of doctors and medical residents found little or no experience in discussing care for dying patients.

Proposal: Improves the type and amount of information available to consumers by making sure that when a person enters a hospital, nursing home, or other health care facility, there is a knowledgeable person available to discuss end of life care planning if requested, so that good decisions—decisions based on the patient's own needs and values—can be made. Requires that if a person has an advance directive it must be placed in a prominent part of the medical record where all the doctors and nurses can clearly see it. Establishes a 24-hour hotline and information clearinghouse to provide consumers with information on end of life decision making.

(2) PORTABILITY OF ADVANCE DIRECTIVES

Current law: The specifics of advance directive legislation vary greatly from state to state. Portability from state to state can only be assured through federal legislation.

Proposal: Ensures that an advance directive valid in one state will be honored in another state, as long as the contents of the advance directive do not conflict with the laws of the state. In addition, requires the Secretary of Health and Human Services to gather information and consult with experts on the possibility of an uniform advance directive for all Medicare beneficiaries, regardless of where they live. An uniform advance directive would enable people to document the kind of care they wish to get at the end of their lives in a way that is easily recognizable and understood by everyone.

(3) MEASURES TO IMPROVE THE QUALITY OF END OF LIFE CARE

Current Law: There are few quality measures or standards available to assess the quality of care provided to Medicare beneficiaries at the end of their life. The tremendous geographic variation in medical care that currently exists on end of life care reinforces the notion that most people do not receive care driven by quality concerns but rather by the availability of medical resources in the community and other factors not related to quality care.

Proposal: Requires the Secretary of Health and Human Services, in conjunction with the Health Care Financing Administration, National Institutes of Health, and the Agency for Health Care Policy and Research, to develop outcome standards and other measures to evaluate the quality care provided to dying patients.

(4) PILOT PROJECT FUNDING TO IMPROVE END OF LIFE CARE SERVICES

Current Law: The only Medicare benefit aimed at improving end of life care for Medicare beneficiaries is hospice care which only serves a small minority of beneficiaries. In 1994, the Medicare hospice benefit was provided to 340,000 dying patients for the last few weeks of their lives. The hospice benefit is limited to beneficiaries who have a terminal illness with a life expectancy of 6 months or less. Cancer and AIDS are virtually the only diseases that follow a predictable course of decline near death. Cancer patients are usually referred to hospice care when the individual's functioning declines, usually 3–6 weeks before death. Medicare beneficiaries with other diseases generally do not have access to hospice care because the 6 month life expectancy requirement is often difficult to determine.

A review of studies done by an Institute of Medicine study panel found that 40 to 80 percent of patients with a terminal illness were inadequately treated for pain ''despite the availability of effective pharmacological and other options for relieving pain.''

Proposal: Provides funding for demonstration projects to develop new and innovative approaches to improving end of life care provided to Medicare beneficiaries, in particular those individuals who do not qualify for, or select, hospice care. Also, includes funding to evaluate existing pilot programs that are providing innovative approaches to end of life care.

(5) IMPROVED COVERAGE OF PAIN MEDICATIONS

Current Law: With a few exceptions, Medicare does not generally pay the cost of self-administered drugs prescribed for outpatient use. The only outpatient pain medications currently covered by Medicare are those that are administered by a portable pump. The pump is covered by Medicare as durable medical equipment, and the drugs associated with that pump are also covered. It is widely recognized among physicians treating patients with cancer and other life-threatening diseases that self-administered pain medications, including oral drug and transdermal patches, offer alternatives that are equally effective at controlling pain, more comfortable for the patient, and much less costly than the pump.

Proposal: Requires Medicare coverage for self-administered pain medications prescribed for outpatient use for patients with life-threatening disease and chronic pain.

Ms. COLLINS. Mr. President, I am pleased to be joining my colleague from West Virginia, Senator ROCKEFELLER, in introducing the Advance Planning and Compassionate Care Act which is intended to improve the way we care for people at the end of their lives.

Noted health economist Uwe Reinhardt once observed that ''Americans are the only people on earth who believe that death is negotiable.'' Advancements in medicine, public health, and technology have enabled more and more of us to live longer and healthier lives. However, when medical treatment can no longer promise a continuation of life, patients and their families should not have to fear that the process of dying will be marked by preventable pain, avoidable distress, or care that is inconsistent with their values or wishes.

The fact is, dying is a universal experience, and it is time to reexamine how we approach death and dying and how we care for people at the end of their lives. Clearly there is more that we can do to relieve suffering, respect personal choice and dignity, and provide opportunities for people to find meaning and comfort at life's conclusion.

Unfortunately, most Medicare patients and their physicians do not currently discuss death or routinely make advance plans for end-of-life care. As a result, about one-fourth of Medicare funds are now spent on care at the end of life that is geared toward expensive, high-technology interventions and rescue care. While four out of five Americans say they would prefer to die at home, studies show that almost 80 percent die in institutions where they may be in pain, and where they are subjected to high-technology treatments that merely prolong suffering.

Moreover, according to a Dartmouth study released earlier this month, where a patient lives has a direct impact on how that patient dies. The study found that the amount of medical treatment Americans receive in their final months varies tremendously in the different parts of the country, and it concluded that the determination of whether or not an older patient dies in the hospital probably has more to do with the supply of hospital beds than the patient's needs or preference.

The Advance Planning and Compassionate Care Act is intended to help us improve the way our health care system serves patients at the end of their lives. Among other provisions, the bill makes a number of changes to the Patient Self-Determination Act of 1990 to facilitate appropriate discussions and individual autonomy in making difficult discussions about end-of-life care. For instance, the legislation requires that every Medicare beneficiary receiving care in a hospital or nursing facility be given the opportunity to discuss end-of-life care and the preparation of an advanced directive with an appropriately trained professional within the institution. The legislation also requires that if a patient has an advanced directive, it must be displayed in a prominent place in the medical record so that all the doctors and nurses can clearly see it.

The legislation will expand access to effective and appropriate pain medications for Medicare beneficiaries at the end of their lives. Severe pain, including breakthrough pain that defies usual methods of pain control, is one of the most debilitating aspects of terminal illness. However, the only pain medication currently covered by Medicare in an outpatient setting is that which is administered by a portable pump.

It is widely recognized among physicians treating patients with cancer and other life-threatening diseases that self-administered pain medications, including oral drugs and transdermal patches, offer alternatives that are equally effective in controlling pain, more comfortable for the patient, and much less costly than the pump. Therefore, the Advance Planning and Compassionate Care Act would expand Medicare to cover self-administered pain medications prescribed for the relief of chronic pain in life-threatening diseases or conditions.

In addition, the legislation authorizes the Department of Health and Human Services to study end-of-life issues for Medicare and Medicaid patients and also to develop demonstration projects to develop models for end-of-life care for Medicare beneficiaries who do not qualify for the hospice benefit, but who still have chronic debilitating and ultimately fatal illnesses. Currently, in order for a Medicare beneficiary to qualify for the hospice benefit, a physician must document that the person has a life expectancy of 6 months or less. With some conditions—like congestive heart failure—it is difficult to project life expectancy with any certainty. However, these patients still need hospice-like services, including advance planning, support services, symptom management, and other services that are not currently available.

Finally, the legislation establishes a telephone hotline to provide consumer information and advice concerning advance directives, end-of-life issues and medical decisionmaking and directs the Agency for Health Care Policy and Research to develop a research agenda for the development of quality measures for end-of-life care.

The legislation we are introducing today is particularly important in light of the current debate on physician-assisted suicide. As the Bangor Daily News pointed out in an editorial published earlier this year, the desire for assisted suicide is generally driven by concerns about the quality of care for the terminally ill; by the fear of prolonged pain, loss of dignity, and emotional strain on family members. Such worries would recede and support for assisted suicide would evaporate if better palliative care and more effective pain management were widely available, and I ask unanimous consent that this editorial be included in the RECORD.

Mr. President, patients and their families should be able to trust that the care they receive at the end of their lives is not only of high quality,

but also that it respects their desires for peace, autonomy, and dignity. The Advanced Planning and Compassionate Care Act that Senator ROCKEFELLER and I are introducing today will give us some of the tools that we need to improve care of the dying in this country, and I urge all of my colleagues to join us as cosponsors.

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

LIFE AND DEATH WITH DIGNITY

When Maine legislators consider a bill this session on physician-assisted suicide, they will face a question that the nation's medical community has been unable to settle after long debate. Legislators should respect the enormity of what they are being asked to consider, recognizing that there are many steps between the current state of caring for the terminally ill and hastening their deaths.

Even as the Supreme Court last week was considering constitutional questions surrounding doctor-assisted suicide, a coalition of 40 health care, religious and retiree groups gathered in Washington to find a middle ground to this debate. The coalition—including the American Medical Association, the American Association of Retired Persons, B'nai B'rith and the American Cancer Society—argues that the desire for assisted suicide often is driven by concerns about the quality of care for the terminally ill. Thoughts of doctor-assisted suicide, these groups maintain, are brought about by the fear of prolonged pain, loss of dignity and the emotional strain on family members, among other reasons.

The coalition suggests that the nation's medical system has failed to meet the physical and emotional needs of dying patients. One study from Memorial Sloan-Kettering in New York estimated that 1.6 million terminally ill people a year would be good candidates for hospice care but only about 350,000 receive it. Why not try to solve these problems before codifying doctor-assisted suicide?

The Maine legislation, called the Death With Dignity Act, is narrowly drawn, based on legislative work on a similar bill from last session. It would allow physicians to assist in the suicide of a terminally ill person who makes three oral and one written request to die and has satisfied a counselor that he or she is capable of making the decision. The act goes to some lengths to prevent coercion and to allow the person to back out of the suicide. It is well-crafted and sensitive legislation. But absent advances in the quality of care for the terminally ill, it also may be premature.

And despite the safeguards, doubts about who will be allowed to pursue this process remain. In a friend-of-the-court brief addressed to the cases being considered by the Supreme Court, the America Geriatric Society explains the source of some of these doubts: ''The image of an independent, capable person thoughtfully evaluating his or her options, unaffected by biased third parties or other circumstances . . . is so far from the experience of dying as to be fanciful. Dying persons are often very weak, prone to strong emotions and vulnerable to the suggestions, expectations and guidance of others.''

The medical community has developed wondrous means for keeping bodies functioning long beyond what could have been expected even a few years ago, perhaps even longer than is desirable. The debate over assisted suicide in state after state demands that physicians go beyond that now in respecting the humanity and mortality that resides within those bodies by providing the terminally ill with the opportunity for less painful, more dignified deaths.

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

S. 1346. A bill to amend title 18, United States Code, to increase the penalties for certain offenses in which the victim is a child; to the Committee on the Judiciary.

JOAN'S LAW ACT OF 1997

Mr. TORRICELLI. Mr. President, I am introducing this bill today, along with my colleague from New Jersey Senator LAUTENBERG, on behalf of Rosemarie D'Alessandro, the mother of a young girl murdered some 24 years ago in New Jersey.

Mrs. D'Alessandro's 7-year-old daughter Joan was delivering Girl Scout cookies down the street from her Hillsdale home one day when Joseph McGowan, a high school chemistry teacher, destroyed her life and changed the lives of her family members forever. McGowan raped Joan, killed her, and dumped her broken, battered body in a ravine some 15 miles away—she was not found for 3 full days.

For Joan's mom, Rosemarie, that shattering event was only the beginning of what would become a literal lifetime of trauma, pain and distress. Although the man who murdered Joan was put away for life, he has already had two parole hearings and is scheduled for another in 2003.

And Rosemarie D'Alessandro cannot rest while these hearings go on. To make sure this murderer remains behind bars, Rosemarie must fight each and every day against the system that might free him, and must sit through appeal after appeal when he is denied release.

But rather than becoming consumed with the tragedy that stole her daughter from her, Rosemarie D'Alessandro has used her grief and her anger to accomplish an astonishing goal—Joan's Law is now in the books in New Jersey, and now any child molester who murders a child under 14 in my State must receive life in prison without the possibility of parole. Rosemarie D'Alessandro stood up and told the world ''enough is enough.'' No other family should have to bear the double tragedy of suffering the loss of a child and then being forced to relive it over and over again through parole hearings and appeals. And no other family in New Jersey will ever have to again.

Well, we do not have parole in the Federal system, but we can make sure that anyone who molests or commits a serious, violent crime against a child 14 or under will serve the rest of his life behind bars if that child dies. My bill states that any person who is convicted of a Federal offense defined as a serious violent felony should be sentenced either to death or imprisonment for life when the victim of the crime is under 14 years of age and dies as a result of the offense.

Mr. President, with this bill, we intend to send the strongest possible message to anyone who would dare molest or attack a vulnerable child—do so at your own risk, because we will find you and we will put you behind bars for the rest of your life if that child dies. I hope my colleagues will quickly join me and Senator LAUTENBERG in passing this legislation, so that the inevitable tragedies that happen to children throughout America every day will no longer be compounded upon the families of those victims.

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. 1346

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 ''Joan's Law Act of 1997''.

SEC. 2. DEATH OR LIFE IN PRISON FOR CERTAIN OFFENSES WHOSE VICTIMS ARE CHILDREN.

Section 3559 of title 18, United States Code, is amended by adding at the end the following:

''(d) DEATH OR LIFE IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—Notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2251 shall, unless a sentence of death is imposed, be sentenced to imprisonment for life, if the victim of the offense—

''(1) is less than 14 years of age at the time of the offense; and

''(2) dies as a result of the offense.''.

Mr. LAUTENBERG. Mr. President, when a child is murdered, families are devastated and communities are rocked to their very core. When a murderer is prosecuted, grieving parents and siblings are forced to relive the often brutal details of the most profound tragedy imaginable. And, if a conviction is obtained, in too many instances, the families of a young victim must repeatedly relieve the crime every time the murderer goes before a parole board.

The families of murder victims, especially murdered children, need closure. They need to know that they can put the horror and a tragedy behind them. They need to know that they can begin rebuilding their lives. But most importantly, they need to know that the person responsible for the crime will never bring harm and grief to another family.

This is why, Mr. President, I am today joining my colleague from New Jersey, Senator TORRICELLI, in introducing legislation that will significantly increase the penalties on criminals convicted of a Federal crime where a child under the age of 14 is killed during the commission of that crime. I also want to commend and acknowledge Congressman BOB FRANKS, also from New Jersey, who introduced similar legislation in the House.

Mr. President, this legislation is a Federal companion for an important New Jersey law called Joan's Law.

Joan's Law was named after a 7-year-old New Jersey girl, Joan D'Alessandro, who was raped and murdered in 1973. Joan's murderer, a man who lived across State lines and actually had the gall to participate in the family's desperate search for their missing daughter, was located, convicted of the crime, and sentenced to 20 years in State prison. He is now eligible for parole, and has twice sought release since his incarceration.

To their horror, frustration, and understandable anger, Joan's family has repeatedly had to fight parole for this cruel killer. They have been forced to relive this tragedy again and again and to beg that others be protected from the brutal individual who ripped apart their family.

The bill we are introducing today will impose a similar, equally severe and necessary penalty—life imprisonment—on anyone convicted of committing a Federal crime where a child, 14 years of age or younger, dies as a result of that crime.

The bill sends a strong message that our society will not tolerate nor forgive the brutal acts of a criminal who takes a young life. This bill sends the message in no uncertain terms that society will take the steps necessary to protect itself from cold-blooded killers who victimize children. This bill will help to protect all of our families and children from the repeat offenders who, all too often, insinuate themselves into our communities and prey on defenseless children.

Mr. President, I urge all of my colleagues to join with Senator TORRICELLI and I in support of this bill and to work for its fast enactment.

By Mr. GLENN:

S. 1347. A bill to permit the city of Cleveland, OH, to convey certain lands that the United States conveyed to the city; to the Committee on Commerce, Science, and Transportation.

THE CLEVELAND AIRPORT EXPANSION ACT OF 1997

Mr. GLENN. Mr. President, I am pleased to introduce legislation to assist in improving air transportation for the people and businesses of northeast Ohio and the Nation.

The city of Cleveland has a major capacity improvement program underway at Cleveland Hopkins International Airport. For some time, Cleveland and the city of Brook Park had been involved in a dispute regarding property crucial to the development project. To their credit, both communities were able to resolve their differences through a comprehensive settlement agreement that will allow the airport's improvement program to move forward. This important settlement agreement includes changing municipal boundaries and the noncontroversial, jurisdictional transfer of property.

Mr. President, Congress has addressed similar restrictions many times by enacting specific provisions allowing the Secretary of Transportation to act in similar cases. As part of the comprehensive settlement agreement this is clearly in the public interest and will allow Cleveland to meet northeast Ohio's increasing requirements for better air transportation.

Mr. President, since the closing of the settlement agreement is to occur before December 31, 1997, this legislation is needed prior to adjournment. I appreciate the support of the leadership of the Committee on Commerce, Science, and Transportation, and I urge my colleagues to support this legislation.

By Mr. LIEBERMAN (for himself, Mr. DASCHLE, Mr. MOYNIHAN, and Mr. KERREY):

S. 1348. A bill to provide for innovative strategies for achieving superior environmental performance, and for other purposes; to the Committee on Environment and Public Works.

THE INNOVATIVE ENVIRONMENTAL STRATEGIES ACT OF 1997

Mr. LIEBERMAN. Mr. President, I am pleased to introduce today The Innovative Environmental Strategies Act of 1997. I'm honored that Senators DASCHLE, MOYNIHAN, and KERREY have joined me as cosponsors, and that the legislation is being introduced in the House by Congressman DOOLEY and Congresswoman TAUSCHER. I'm also very pleased that the legislation has been endorsed by the Clinton administration and has received positive responses from representatives of industry and environmental groups. I look forward to a process of building further consensus on this bill from all affected interests.

The legislation allows companies to propose alternatives to environmental requirements if those alternative proposals will achieve better environmental performance. The legislation provides EPA with the authority to waive or modify regulatory requirements for this purpose. It is designed to encourage more pollution prevention and to promote better, more cost-effective solutions for environmental protection.

This legislation seeks to build on both the work of President Clinton's Project XL—standing for excellence and leadership—and the Aspen Institute which undertook a 3-year effort to reach consensus among a wide group of divergent interests on an alternative path to achieving a cleaner, cheaper way to protect and enhance the environment. The Aspen Institute's work resulted in an excellent report, ''The Alternative Path, A Cleaner, Cheaper Way to Protect and Enhance the Environment.''

This bill modifies legislation introduced at the end of last Congress. At that time, I indicated that I welcomed all proposals and suggestions on how to alter and improve the bill. I have received a significant number of comments from industry, governmental and environmental group representatives. The new bill attempts to reflect many of those comments, in addition to a new GAO report examining EPA's reinvention efforts, ''Challenges Facing EPA's Efforts to Reinvent Environmental Regulation,'' and a recently released report by the National Academy of Public Administration, ''Resolving the Paradox of Environmental Protection.'' The National Academy report recommends statutory authorization for EPA's XL program.

There is clearly a wide consensus in this country that our environmental laws have performed remarkably well. As the writer Gregg Easterbrook has pointed out, environmental protection is probably the single greatest success story of American government in the period since World War II.

In many cases, however, we need to do more to provide the level of protection most Americans expect from government. For example, over one third of our rivers and lakes still do not fully meet water quality standards. Health advisories for eating fish have increased. The number of people suffering from asthma has reached epidemic proportions in some communities, particularly among children.

Pollution prevention—preventing pollution before it occurs—is one approach that can help us do both better both in terms of protecting the environment and actually saving companies money. The greater efficiency resulting from less waste disposal and reduced use of toxic chemicals can significantly bolster the competitiveness of companies.

Recently, I listened to a presentation indicating that perhaps the Nation is not doing as well in pollution prevention as we should be. A 1995 report by the research group INFORM, ''Toxics Watch 1995,'' reviewed thousands of documents submitted by industry to EPA to show whether progress was made to further pollution prevention. While 25 percent of the forms indicated some effort in pollution prevention had been made, the remaining 75 percent gave no such indication. And, according to INFORM, while some leading companies have taken major pollution prevention steps, the broader picture is troublesome: total waste generation is increasing.

While these facts show there is clearly a need to improve protection of our environment and pollution prevention, there is just as clearly a need to review our methods of environmental protection in order to find better, more efficient, more innovative ways to achieve greater progress toward meeting our environmental goals. In some cases, the traditional approaches to regulation have hindered companies from doing a better job at pollution prevention.

There is a growing consensus that innovative environmental strategies can form the basis for a new approach to environmental protection that will

achieve superior environmental results, including greater pollution prevention, at less cost for regulated industry. This consensus can be seen, for example, in the work of the President's Council on Sustainable Development which brought together leaders from government, environmental, civil rights, labor and native American organizations in an effort to achieve consensus on national environmental, economic and social goals, as well as in the work of the Aspen Institute.

This bill establishes an innovative environmental strategies program at EPA. The Administrator of EPA is authorized to enter into approximately 50 agreements with regulated entities seeking modifications or waivers from environmental requirements if certain criteria are met. The basic premise of the bill is that better environmental performance can be achieved by allowing environmental managers at companies, in partnership with an active group of community stakeholders, to develop their own means of reaching environmental goals. This approach recognizes that the regulated industry is now in an excellent position to experiment and decide what approaches will yield better environmental results than the company is achieving under existing regulations. Allowing flexibility can substantially reduce compliance costs and make industries more competitive, provide for much greater community involvement in the decisions of their neighboring industrial plants, foster more cooperative partnerships, and encourage greater innovation and pollution prevention.

Another key element of this program is incorporating the lessons learned from the innovative environmental strategies into the overall regulatory structure of the Agency, where appropriate.

While the bill authorizes approximately 50 innovative strategy agreements, these individual strategies should have widespread benefits for other companies as the Agency incorporates the lessons learned into its overall approach to environmental protection.

Let me discuss a few specific provisions of the bill.

First, the bill establishes benchmarks from which to determine whether better environmental results will be achieved under the innovative environmental strategy. For existing facilities, the benchmark generally will be either the level of releases of a pollutant into the air, land or water actually being achieved by the facility or the level of releases allowed under the applicable regulatory requirements and reasonably foreseeable future requirements, whichever is lower. The Administrator is given some flexibility in determining the appropriate measurement for the benchmark. For example, measuring releases per unit of production encourages pollution prevention but may result in releases of concern to the community; the Administrator should take both these factors into account in determining whether a per unit measurement is appropriate. The Administrator shall determine whether an innovative environmental strategy achieves better environmental results based on the magnitude of reduction in the level of releases or improvement in pollution prevention relative to each benchmark. In addition, the Administrator shall evaluate other benefits that would result from the strategy. These include whether the strategy results in environmental performance more protective than the best performance practice of comparable facilities or improvement in environmental conditions that are priorities to stakeholders, even if those conditions are not regulated under EPA statutes.

Different types of innovative environmental strategies are possible under this legislation. For example, in some cases, a facility may demonstrate better environmental results by showing a reduction in releases of pollutants and, in exchange, seek a modification of reporting or other paperwork requirements. In other cases, a facility may demonstrate better environmental results by showing a reduction in releases of pollutants, but seek modification of a rule to allow for flexibility with respect to emission levels at different sources within the facility. There may be some cases where the innovative environmental strategy would result in large decreases in some pollutants while resulting in a small increase in another pollutant. But there are a number of specific requirements that must be met under those circumstances. Among other requirements, the Administrator must determine, based on a well-established analytic methodology acceptable both to the Administrator and the stakeholders, that the strategy will achieve better overall environmental results with an adequate margin of safety and will not result in an increase in the risk of adverse effects or shift the risk of adverse effects to the health of an individual, population, or natural resource affected by the strategy. I recognize that it is difficult to make such determinations because we have inadequate information about many chemicals and we often do not know how properly to evaluate cumulative or synergistic effects. The Administrator should pay close attention to these factors in evaluating projects. These examples are only illustrative of a range of potential projects.

The bill also provides that in appropriate cases, the Administrator may establish a benchmark for measuring better environmental performance based on pollution prevention.

The bill requires that the innovative environmental strategy provide a means and level of accountability, monitoring, enforceability and public access to information for all enforceable provisions at least equivalent to that provided by the rule that is being modified or waived. A related requirement is that adequate information must be made accessible so that any member of the public can verify environmental performance. Other requirements that must be met by the petitioner are set forth in section 7.

Effective stakeholder participation is the second key element of the legislation. Any company submitting a proposal must undertake a stakeholder participation process. One of the criteria for approval of a project by EPA is that the stakeholders have obtained adequate independent technical support for an effective stakeholder process. Under the bill, the stakeholder process is open to anyone, except a business competitor, subject to manageability factors. The stakeholder group should genuinely represent the full range of interests affected by projects and the policies to be shaped by projects. Involving citizens, including workers and members of the local community, in the development of an innovative environmental strategy is absolutely critical. Companies that have formulated successful innovative environmental strategies have told me that without the support of the local community these strategies simply will not work. Empowerment of the local community through stakeholder processes will help build trust and make implementation of the agreement easier. In other words, the innovative environmental strategy should be a partnership between the proponent and the stakeholders.

The bill requires the Administrator to give great weight to the views of the stakeholders. Obtaining broad community support for the strategy, as shown through stakeholder support, is very important. Additionally, the stakeholders and the proponent of the strategy may decide as part of the guidelines setting up the stakeholder process, that the stakeholders as a group or individual stakeholder participants should have a veto right with respect to whether the strategy goes forward. If the proponent still presents a proposal for the strategy even with such objections, the Administrator is required to reject the strategy if the objection has a clear and reasonable foundation and relates to the criteria for approval. The principle here is simple: stakeholders and the facility owner need to come to agreement on the guidelines that will govern the project. This agreement on the guidelines should be reached at the start of the process. It must be followed; if not, the Administrator will not be able to make the finding that the requirements of section 6 of the statute have been met.

The bill also attempts to address the recommendations made in the GAO report of July 1997, ''Challenges Facing EPA's Efforts to Reinvent Environmental Regulation'', which examined EPA's XL program. First, the GAO concludes that EPA will be limited in its ability to truly reinvent environmental regulation without legislative changes. Second, the GAO recommends

that the Agency's reinvention initiatives include an evaluation component measuring the extent to which the initiative has achieved its intended effect. Therefore, the bill requires that, within 18 months after entering into an agreement, the Administrator provide a report evaluating whether the lessons learned from a particular strategy can be incorporated into the overall regulatory or statutory structure of the Agency. The legislation also requires a broader report to Congress within 3 years.

Finally, the GAO proposes that EPA develop a systematic process that would help address problems that come up during reinvention projects in a timely fashion. This process should be set up to identify the kinds of problems that can be resolved at lower levels within the Agency and which should be elevated for management's attention. While the bill does not specifically address this recommendation, I hope that EPA will seriously examine how it can implement this constructive recommendation.

As the GAO report notes, the EPA has undertaken a broad range of reinvention efforts. This legislation in no way affects the ability of EPA to proceed under its appropriate authorities with those efforts, including agreements under XL.

I ask unanimous consent that the full text of the legislation be included in the RECORD.

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

S. 1348

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 ''Innovative Environmental Strategies Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) superior environmental performance can be achieved in some cases by granting regulated entities the flexibility to develop innovative environmental strategies for achieving environmental results in partnership with affected stakeholders;

(2) innovative environmental strategies also have the potential to—

(A) substantially reduce compliance costs;

(B) foster cooperative partnerships among industry, government, public interest groups, and local communities;

(C) encourage regulated entities to meet and exceed environmental obligations through greater innovation and greater pollution prevention; and

(D) increase the involvement of members of the local community and other citizens in decisions relating to the environmental performance goals and priorities of a facility; and

(3) the lessons learned from successful innovative environmental strategies should be incorporated into the broader system of environmental regulation.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) AGENCY.—The term ''agency'' means the Environmental Protection Agency.

(3) AGENCY RULE.—

(A) IN GENERAL.—The term ''agency rule'' means a rule (as defined in section 551 of title 5, United States Code) promulgated by the agency.

(B) EXCLUSIONS.—The term ''agency rule'' does not include—

(i) an emissions reduction requirement under title IV of the Clean Air Act (42 U.S.C. 7651 et seq.); or

(ii) a requirement under subtitle B of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11021 et seq.).

(4) PERSON.—The term ''person'' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, Indian tribe, municipality, commission, political subdivision of a State, interstate body, or department, agency, or instrumentality of the United States.

SEC. 4. INNOVATIVE ENVIRONMENTAL STRATEGY AGREEMENTS.

(a) IN GENERAL.—

(1) PROPOSAL.—A person that owns or operates a facility that is subject to an agency rule, requirement, policy, or practice may submit to the Administrator a proposal for an innovative environmental strategy for achieving better environmental results.

(2) AGREEMENT.—If the Administrator finds that the requirements of section 7 are met and approves the proposed strategy, the Administrator may enter into an innovative environmental strategy agreement with respect to the facility.

(3) CONTENTS.—An agreement under paragraph (1)—

(A) may—

(i) modify or waive otherwise applicable agency rules, requirements, policies, or practices;

(ii) establish new environmental standards for a facility; or

(iii) establish new requirements not contained in existing agency rules or existing environmental statutes;

(B) may not contravene the specific terms of a statute; and

(C) should further the purposes of applicable environmental statutes.

(b) COSPONSOR.—

(1) IN GENERAL.—The Administrator shall establish procedures under which a person other than the owner or operator of a facility may cosponsor a proposal.

(2) PRIORITY.—The Administrator shall give priority to proposals co-sponsored by a stakeholder group.

SEC. 5. SUBMISSION OF PROPOSAL.

(a) CONTENTS OF PROPOSAL.—A proposal for an innovative environmental strategy shall be clearly and concisely written and shall—

(1) identify any agency rule, requirement, policy, or practice for which a modification or waiver is sought and any alternative requirement that is proposed;

(2) describe the proposed innovative environmental strategy and the facility to which the strategy would pertain; and

(3) demonstrate the manner in which the innovative environmental strategy is expected to meet the requirements of section 7.

(b) PRELIMINARY REVIEW.—The Administrator shall review the proposal and determine whether, in the Administrator's sole discretion, the proposed strategy is sufficiently promising that the Administrator is prepared to enter into negotiations toward execution of an innovative environmental strategy agreement.

(c) NOTIFICATION.—The Administrator shall notify the proponent of a determination under subsection (b) not later than 90 days after submission, unless the proponent agrees to a longer review.

SEC. 6. STAKEHOLDER PARTICIPATION PROCESS.

(a) IN GENERAL.—The proponent of a proposal under section 5 shall—

(1) upon approval of the proposal for negotiation toward an agreement, undertake a stakeholder participation process in accordance with this section; and

(2) work to ensure that there is adequate independent technical support for an effective stakeholder process.

(b) DEVELOPMENT OF PROCESS.—

(1) IN GENERAL.—The stakeholder participation process shall be developed by the stakeholders and the proponent, in consultation with the Administrator.

(2) REQUIREMENTS.—The stakeholder participation process shall—

(A) be balanced and representative of interests that may be affected by the proposed strategy;

(B) ensure opportunities for public access to the process and make publicly available in a timely manner the proceedings of the stakeholder participation process, except with respect to confidential business information;

(C) establish procedures for conducting the stakeholder participation process, including open meetings as appropriate;

(D) if necessary, provide for appropriate agreements to protect confidential business information; and

(E) establish guidelines for the role of stakeholders, individually and as a group or subgroup, in the development of the strategy, including whether the stakeholders have an advisory, consultative, decision-making or veto role with respect to the strategy.

(c) FACA.—A stakeholder process satisfying the requirements of this section shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(d) PUBLIC NOTICE OF APPLICATION.—After a proposal is approved for negotiation toward an agreement, the proponent shall provide public notice of the proposal in a manner, approved by the Administrator, that is reasonably calculated to reach potentially interested parties including—

(1) community groups;

(2) environmental groups;

(3) potentially affected employees;

(4) persons living near or working in or near the affected facility; and

(5) relevant Federal, State, tribal, and local agencies.

(e) PARTICIPATION.—

(1) IN GENERAL.—A person that, not later than 60 days after the date on which public notice is first given under subsection (c), notifies the proponent of the person's intention to participate in the stakeholder participation process may participate in the process, except that a person that has a business interest in competition with that of the proponent may be excluded.

(2) ADDITIONAL STAKEHOLDERS.—Additional stakeholders may be added by the proponent, the Administrator or the stakeholder group after the stakeholder group is initially constituted in order to ensure full representation of all potentially affected interests throughout the process, including representation with respect to any new issues that may be raised during the process, and to ensure that appropriate expert assistance is available for the stakeholders.

(f) LIMITATION ON NUMBER OF PARTICIPANTS.—

(1) IN GENERAL.—In order to provide for a manageable stakeholder process, the Administrator may limit the number of stakeholder participants if the Administrator determines that the stakeholder participants adequately represent, in a balanced manner, the full range of interests (excluding competitive business interests) that may be affected by the innovative environmental strategy.

(2) NOTICE.—Before approving a limit on the number of stakeholder participants, the Administrator shall ensure that appropriate notice was provided to each of the groups identified in subsection (d).

(3) ADDITIONAL STAKEHOLDERS.—Notwithstanding any limit on the number of stakeholders that may be approved, additional stakeholders may be added to meet the requirements of subsection (e).

(g) NEGOTIATION.—After the stakeholder group has been identified, and procedures for the stakeholder process have been agreed on under subsection (b)(2)(E), the proponent, the stakeholders, and the Administrator shall initiate the process of negotiating toward an innovative environmental strategy agreement.

SEC. 7. REQUIREMENTS FOR APPROVAL.

(a) IN GENERAL.—The Administrator may enter into an innovative environmental strategy agreement if the Administrator determines that—

(1) the strategy is expected to achieve better environmental results (as determined under subsection (c));

(2) the strategy has potential value as a model for future changes in the broader regulatory structure or as a demonstration of new technologies or measures with potential for reducing pollution on a broader scale;

(3) the strategy provides for access to information adequate to enable verification of environmental performance by any interested person;

(4) the strategy provides a means and level of accountability, transparency, monitoring, reporting, and public and agency access to information relating to activities being carried out under an innovative environmental strategy that is at least equivalent to that provided under the agency rule, requirement, policy, or practice that the agreement seeks to modify or waive, including reporting of the benchmarks in the agreement;

(5) no person or populations would be subjected to unjust or disproportionate adverse environmental impacts as a result of implementation of the strategy;

(6) the strategy will ensure worker health and safety protections that are the same or superior to those provided under existing law;

(7) the strategy is not expected to result in adverse transport of a pollutant;

(8) any Federal, State, tribal, or local environmental agencies required to be signatories under section 8(c) are prepared to sign the agreement and the consultation required under section 8(c)(3) has occurred;

(9) the stakeholder participation process met the requirements of section 6, and the stakeholders have obtained adequate independent technical support for an effective process;

(10) there is broad community support for the strategy, as shown by stakeholder support and other relevant factors; and

(11) the strategy is expected to reduce regulatory burdens or provide other social or economic benefits.

(b) OTHER CONSIDERATIONS.—In determining whether to enter into an agreement, or to negotiate toward an agreement, the Administrator shall consider—

(1) whether the facility has a strong record of compliance with environmental and public health regulations and whether the proponent has demonstrated a strong commitment to achieve pollution prevention with respect to the facility;

(2) the extent to which the strategy involves new approaches to environmental protection and multimedia pollution prevention;

(3) the extent to which there is a link between the modification or waiver sought, the better environmental results expected, and other benefits; and

(4) the feasibility of the strategy and the ability of the proponent to carry out the strategy.

(c) BETTER ENVIRONMENTAL RESULTS.—

(1) EVALUATION.—The Administrator shall determine whether a strategy is expected to achieve better environmental results based on the magnitude of reduction in the level of releases or improvement in pollution prevention relative to each benchmark established under paragraphs (4) through (7);

(2) OTHER CONSIDERATIONS.—In addition to making the determination under paragraph (1), the Administrator shall evaluate the extent to which the strategy—

(A) results in environmental performance more protective than the best performance practice of comparable facilities;

(B) relies on pollution prevention;

(C) incorporates continuous improvement toward ambitious quantitative environmental goals;

(D) produces clear reduction of risk, based on a well-accepted analytical method acceptable to the Administrator and the stakeholders;

(E) improves environmental conditions that are priorities to stakeholders, including conditions not regulated under statutes administered by the agency;

(F) reflects historic demonstration of leadership in environmental performance of the facility;

(G) substantially addresses community and public health priorities of concern to stakeholders, including concerns not addressed under statutes administered by the agency;

(H) addresses other factors that the Administrator determines clearly improve environmental performance in the context of a specific strategy; and

(I) includes reductions in releases or improvement in pollution prevention in addition to those considered by the Administrator for purposes of paragraph (1).

(3) FINDINGS.—The Administrator shall provide findings setting forth the basis for the determination that the innovative environmental strategy is expected to achieve better environmental results. If the Administrator determines that the magnitude of reduction in the level of releases or improvement in pollution prevention would be a reduction or improvement, but not a significant reduction or improvement, the Administrator may approve a proposal only if the Administrator determines that the strategy is expected to result in a clear and substantial improvement in environmental protection, considering the other factors in this subsection.

(4) BENCHMARK.—The benchmark for releases of each pollutant into the air, water, or land shall be as follows:

(A) EXISTING FACILITIES.—For existing facilities, the benchmark shall be the lesser of—

(i) the level of releases of each pollutant into the air, water, or and being achieved before the date of submission of the proposal; or

(ii) the level of releases of each pollutant into the air, water, or land allowed under applicable regulatory requirements and any reasonably anticipated future regulatory requirements;

except that the Administrator may, based on extraordinary site-specific circumstances, modify the level under subparagraph (A)(i) on a case by case basis for a facility that has reduced releases significantly below applicable regulatory requirements before the date of submission of the proposal.

(B) NEW OR MODIFIED FACILITIES.—For new or significantly expanded facilities, the benchmark shall be based on the lesser of—

(i) the level of releases of each pollutant into the air, water, or land allowed under applicable regulatory requirements and any reasonably anticipated future regulatory requirements; or

(ii) the level of releases of each pollutant into the air, water, or land based on best industry practices.

(5) POLLUTION PREVENTION.—

(A) NO RELEASE OF A POLLUTANT.—In appropriate circumstances not involving release of a pollutant, the Administrator may establish a pollution prevention benchmark to evaluate changes in inputs to production of materials or substances of potential environmental or public health concern.

(B) RELEASE OF A POLLUTANT.—In circumstances involving a release of a pollutant, the Administrator may establish a pollution prevention benchmark in addition to the benchmark under paragraph (4).

(6) BASIS OF MEASUREMENT.—A benchmark may be established on the basis of total emissions, on a per-unit of production basis, or on a comparable basis of measurement, as determined by the Administrator.

(7) OTHER CONSIDERATIONS.—The Administrator may determine that the requirements of this section are met if a benchmark is not met, if—

(A) with respect to other benchmarks, the strategy achieves a significant increment of reduced level of releases below that permitted by the benchmark;

(B) the strategy, based on a well-established analytic methodology acceptable to the Administrator and the stakeholders—

(i) is expected to achieve overall better environmental results with an adequate margin of safety;

(ii) is not expected to result in an increase in the risk of adverse effects, or shift the risk of adverse effects, to the health of an individual, population, or natural resource affected by the strategy; and

(iii) is expected to achieve clear risk reduction; and

(C) the strategy is not expected to result in an exceedance of an ecological, health, or risk-based environmental standard.

(d) VIEWS OF STAKEHOLDERS.—

(1) IN GENERAL.—The Administrator shall give great weight to the views of individual stakeholders and to the stakeholders as a group in determining whether to approve or disapprove a strategy.

(2) STAKEHOLDERS WITH DECISIONMAKING ROLE.—The Administrator shall deny a proposal if—

(A) the stakeholder group and the proponent have determined under section 6 that the group, any subgroup, or 1 or more individual stakeholders in the group will have the ability to veto a decision by the proponent to go forward with the strategy;

(B) the group or 1 or more stakeholders objects to the strategy; and

(C) the Administrator determines that the objection relates to the criteria stated in section 7 and that the objection has a clear and reasonable foundation.

SEC. 8. FINAL DETERMINATION ON AGREEMENT.

(a) PROPOSAL.—

(1) IN GENERAL.—Not later than 180 days after the date on which negotiations are initiated under section 6(g) or such later date as may be agreed to by the proponent and the stakeholders, the Administrator shall—

(A) provide public notice and opportunity to comment on a proposed innovative environmental strategy agreement; or

(B) notify the proponent and the stakeholder group that the Administrator does not intend to enter into an agreement.

(2) FORM OF NOTICE.—Public notice under paragraph (1) shall be provided by—

(A) publishing a notice in the Federal Register; and

(B) providing public notice to persons potentially interested in the strategy in the manner described in section 6(d).

(3) COMMENT PERIOD.—The public comment period shall be not less than 30 days, and shall be extended by an additional 30 days if an extension is requested by any person not later than 15 days after the beginning of the public comment period.

(b) FINAL DECISION.—

(1) IN GENERAL.—Not later than 60 days after the end of the public comment period, the Administrator shall determine whether to enter into an agreement, and shall give notice of the determination in the same manner as notice was given of the proposed agreement.

(2) RESPONSE.—The Administrator—

(A) shall respond to comments received; and

(B) may modify the agreement in response to the comments.

(c) SIGNATORIES.—

(1) IN GENERAL.—The parties to an innovative environmental strategy agreement—

(A) shall include the Administrator, the proponent, and any Federal, State, or local agency or Indian tribe with jurisdiction over the subject matter of the agreement under this Act; and

(B) may include a stakeholder.

(2) JOINT RULES REQUIREMENTS AND POLICIES.—If an agreement waives or modifies a rule, requirement, or policy issued by the agency jointly with another Federal agency, the other Federal agency shall be a signatory to the agreement.

(3) CONSULTATION.—The Administrator shall consult with and consider the views of any Federal agency with management responsibility or regulatory or enforcement authority over land or natural resources that may be affected by the strategy.

SEC. 9. STATE ROLE.

(a) IN GENERAL.—If a proposed strategy involves waiving or modifying requirements imposed under State, tribal, or local law, the Administrator shall not approve an agreement unless procedures required under those laws for such waiver or modification are followed in addition to the execution of the innovative environmental strategy agreement.

(b) PART OF FEDERAL PROGRAM.—If a proposed strategy involves waiving or modifying requirements of State, tribal, or local law that are part of an authorized or delegated Federal program, execution of an innovative environmental strategy agreement by the Administrator and by the State, Indian tribe, or local government shall be deemed to provide authorization or approval of the program as modified by the agreement.

SEC. 10. ENFORCEABILITY.

(a) SPECIFICATION OF ENFORCEABLE PROVISIONS.—

(1) DEFINITION OF VOLUNTARY COMMITMENT.—In this section, the term ''voluntary commitment'' means a commitment that the parties to the agreement consider to be a necessary part of the strategy but is not enforceable under this section.

(2) INCLUSION IN AGREEMENT.—An innovative environmental strategy agreement shall include enforceable requirements and may include voluntary commitments.

(3) ENFORCEABLE REQUIREMENTS.—

(A) IDENTIFICATION.—Enforceable requirements shall be clearly identified and distinguished in the agreement from voluntary commitments.

(B) INCLUSION OF ALL NECESSARY ACTIONS.—In all cases, enforceable requirements shall include, at a minimum, all actions necessary to achieve better environmental results relied upon by the Administrator for purposes of section 7(c)(1), and all accountability, monitoring, reporting, and public and agency access requirements mandated by paragraphs (3) and (4) of section 7(a).

(4) VOLUNTARY COMMITMENTS.—Failure to implement a voluntary commitment may constitute a ground for termination of the agreement.

(b) TREATMENT OF AGREEMENT AS PERMIT, CONDITION, OR REQUIREMENT.—

(1) DEFINITION OF OTHERWISE APPLICABLE REQUIREMENT.—In this subsection, the term ''otherwise-applicable requirement'' means a rule, permit, condition, policy, practice, or other requirement that an innovative environmental strategy agreement modifies, waives, or replaces.

(2) IDENTIFICATION OF ENFORCEABLE REQUIREMENTS.—An innovative environmental strategy agreement shall state in a separate section designated ''Enforceable Requirements'' all of the enforceable requirements of the agreement.

(3) IDENTIFICATION OF MODIFIED, OTHERWISE WAIVED OR RELOCATED REQUIREMENTS.—An innovative environmental strategy agreement shall identify (including citation to the specific provision of a statute or rule), with respect to each enforceable requirement, each otherwise-applicable requirement that the agreement waives, modifies, or replaces.

(4) TREATMENT.—Each enforceable requirement shall be deemed, for purposes of enforcement, to be a permit issued under, a condition imposed by, or a requirement of the statute or rule under which the otherwise-applicable requirement that the agreement modifies, waives, or replaces was imposed.

(5) ENFORCEABILITY.—Each enforceable requirement shall be enforceable in the same manner and to the same extent (by the United States, by a State or Indian tribe, or by any other person) as the otherwise-applicable requirement would have been enforceable but for the agreement.

(6) NEW ENFORCEABLE REQUIREMENT DERIVED FROM OR IMPOSED UNDER CURRENT LAW.—An enforceable requirement that does not modify, waive, or replace a requirement shall be enforceable in the same manner and to the same extent as a permit, condition, or requirement under the statute or rule from or under which the enforceable requirement derives or is imposed.

(7) ENFORCEABLE REQUIREMENT THAT DOES NOT MODIFY, WAIVE, OR REPLACE ANOTHER REQUIREMENT.—If an enforceable requirement does not derive from or is not imposed under any statutory or regulatory provision, the agreement shall specify the statute under which the enforceable requirement shall be deemed to be imposed for purposes of enforcement and shall be enforceable (by the United States, a State, Indian tribe, and by other persons) in the same manner and to the same extent as a permit, condition, or requirement under that statute or regulation.

(8) EMERGENCY OR IMMINENT HAZARD AUTHORITY.—Nothing in this Act limits or affects the Administrator's emergency or imminent hazard authorities.

(c) SPECIFICATION OF AFFECTED REQUIREMENTS.—

(1) IN GENERAL.—When the Administrator approves an innovative environmental strategy agreement under subsection (a), the Administrator shall specify in the agreement each rule, requirement, policy, or practice that is modified or waived by the innovative agreement.

(2) NO MODIFICATION OR WAIVER.—Each rule, requirement, policy, or practice not specified pursuant to the preceding sentence is not modified and waived.

(d) TERMINATION OR MODIFICATION OF AGREEMENT.—

(1) IN GENERAL.—The Administrator may terminate or modify an innovative environmental strategy agreement if the Administrator determines that—

(A) the strategy fails or will fail to achieve the better environmental results identified pursuant to section 7;

(B) better environmental results are no longer being achieved by the strategy by reason of the enactment of a new provision of law or promulgation of a new regulation;

(C) there has been noncompliance with the terms of the agreement (including a voluntary commitment);

(D) there has been a change or transfer in ownership or operational control of the facility to which the agreement relates, or a material change, alteration, or addition to the facility; or

(E) any other event specified in the agreement as a ground for termination or modification has occurred.

(2) EFFECT.—On termination of an innovative environmental strategy agreement, the owner or operator of the facility to which the agreement related shall immediately become subject to each otherwise-applicable requirement (as defined in subsection (b)).

(e) TERM OF AGREEMENT.—

(1) IN GENERAL.—The term of an innovative environmental strategy agreement shall not exceed 5 years, unless the Administrator determines, after considering the views of the stakeholders, that—

(A) a longer period of time is required—

(i) to achieve the better environmental results identified under section 7; or

(ii) in a case in which a proponent is making a substantial investment in reliance on the agreement, to ensure a reasonable degree of confidence that the investment will be recovered; and

(B) the requirements of section 7 continue to be met.

(2) EXTENSION OR RENEWAL.—In consultation with the stakeholders and with the concurrence of the signatories to the agreement and after public notice and opportunity for comment consistent with section 8, the Administrator may extend or renew an agreement for an additional term or terms, but the Administrator may not extend or renew an agreement if the extension or renewal would not further the purposes of this Act or the strategy would no longer meet the requirements of section 7.

SEC. 11. JUDICIAL REVIEW.

(a) FAILURE TO PERFORM NONDISCRETIONARY ACT OR DUTY.—

(1) IN GENERAL.—Any person may commence a civil action in the United States District Court for the District of Columbia against the Administrator for failure to perform an act or duty under this Act that is not discretionary with the Administrator.

(2) TIMING.—No action may be commenced under subsection (a) before the date that is 60 days after the date on which the plaintiff gives notice to the Administrator of the act or duty that the Administrator has failed to perform and of the intent of the plaintiff to commence the action.

(b) DECISION TO ENTER INTO AGREEMENT.—

(1) IN GENERAL.—A person other than a signatory to an innovative environmental strategy agreement may seek judicial review of a decision by the Administrator to enter into such an agreement in accordance with chapter 7 of title 5, United States Code.

(2) APPEAL.—A petition on appeal of a judgment in a civil action under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 90 days after the date on which public notice of the decision to enter into the agreement is published under section 8(b).

(c) NO JUDICIAL REVIEW OF OR RECORD JUSTIFICATION FOR DECISION NOT TO ENTER INTO

AGREEMENT.—A decision not to enter into, modify, renew, or enter into negotiations toward an innovative environmental strategy agreement and decisions under section 6 regarding the stakeholder process shall not be subject to judicial review and shall not require record justification by the Administrator.

SEC. 12. LIMITATION ON NUMBER OF AGREEMENTS.

(a) IN GENERAL.—The Administrator shall not enter into more than 50 innovative environmental strategy agreements unless, in the Administrator's sole discretion, and taking into account the full range of the agency's obligations, the Administrator determines that adequate resources exist to enter into a greater number of agreements.

(b) LIMIT.—The Administrator, in the Administrator's sole discretion, may limit the number of agreements to less than 50.

(c) PRIORITY CONSIDERATION DIVERSITY.—The Administrator shall—

(1) give priority consideration to proposals from small businesses; and

(2) seek to ensure that the agreements entered into reflect proposals from a diversity of industrial sectors, particularly from sectors where there is significant potential for environmental improvement.

SEC. 13. SMALL BUSINESS PROPOSALS.

The Administrator shall establish a program to facilitate development of proposals for innovative environmental strategies from small businesses and groups of small businesses and to provide for expedited and tailored review of such proposals.

SEC. 14. SAVINGS CLAUSE.

(a) EFFECT OF DECISIONS BY THE ADMINISTRATOR.—A decision by the Administrator to enter into an agreement under this Act shall not affect the validity or applicability of any rule, requirement, policy, or practice, that is modified or waived in the agreement with respect to any facility other than the facility that is subject to the agreement.

(b) OTHER AGREEMENTS.—Nothing in this Act affects the authority of the Administrator in existence on the date of enactment of this Act to enter into or carry out agreements providing for innovative environmental strategies or affects any other existing authority under which the Administrator may undertake innovative initiatives.

(c) OTHER FEDERAL AGENCIES.—Nothing in this Act affects the regulatory or enforcement authority of any other Federal agency under the laws implemented by the Federal agency except to the extent provided in an agreement to which the other Federal agency is a party.

(d) LIMITS ON PURPOSES AND USES OF AGREEMENTS.—An agreement under this Act—

(1) may not be adopted for the purpose of curing or addressing past or ongoing violations or noncompliance at a participating facility;

(2) may not be used as a legal or equitable defense by any party or facility not party to the agreement, or by a party to the agreement as a defense in an action unrelated to any requirement imposed under the agreement;

(3) shall not limit or affect the Administrator's authority to issue new generally applicable regulations or to apply regulations to the facility that is the subject of the agreement;

(4) shall not give rise to any claim for damages or compensation in the event of a change in statutes or regulations applicable to such facility; and

(5) shall not be admissible for any purpose in any judicial proceeding other than a proceeding to challenge, defend, or enforce the agreement.

(e) APPLICABLE LAW.—

(1) CONTRACT LAW.—An innovative environmental strategy agreement—

(A) shall not be interpreted or applied according to contract law principles; and

(B) shall not be subject to contract or other common law defenses.

(2) OSHA.—For purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), the exercise by the Administrator of any authority under this Act shall not be deemed to constitute or exercise of authority to prescribe or enforce a standard or regulation affecting occupational safety or health.

SEC. 15. EVALUATION AND REPORT.

(a) EVALUATION.—The Administrator shall establish an ongoing process with public participation to—

(1) evaluate lessons learned from innovative environmental strategies; and

(2) determine whether the approaches embodied in an innovative environmental strategy should be proposed for incorporation in an agency rule.

(b) REPORTS.—

(1) INDIVIDUAL STRATEGIES.—Not later than 18 months after entering into an innovative environmental strategy agreement, the Administrator shall submit to Congress a report evaluating whether the approaches embodied in an innovative environmental strategy should be proposed for incorporation in a statute or a regulation.

(2) AGGREGATE EFFECT.—Not later than 3 years after the date of enactment of this Act, the Administrator shall submit to Congress a report on the aggregate effect of the innovative environmental strategy agreements entered into under this Act, including—

(A) the number and characteristics of the agreements;

(B) estimates of the environmental and public health benefits, including any reductions in quantities or types of emissions and wastes generated;

(C) estimates of the effect on compliance costs;

(D) the degree and nature of public participation and accountability;

(E) estimates of nonenvironmental benefits obtained;

(F) conclusions on the functioning of the stakeholder participation process; and

(G) a comparison of effectiveness of the program relative to comparable State programs, using comparable performance measures.

SEC. 16. IMPLEMENTATION AUTHORITY.

The Administrator may issue such regulations as are necessary to carry out the agency's functions under this Act.

SEC. 17. TECHNICAL ASSISTANCE GRANTS.

The Administrator may establish a program to provide grants for technical assistance to stakeholder groups.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the agency to carry out this Act $4,000,000 for each of fiscal years 1999 through 2003 (including such sums as are necessary to provide technical assistance to stakeholder groups).

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

S. 1349. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Prince Nova*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CROSS SOUND FERRY SERVICE ACT OF 1997

Mr. DODD. Mr. President, I rise today to introduce with Senator LIEBERMAN legislation to waive the 1920 Merchant Marine Act, commonly known as the Jones Act, to allow Cross Sound Ferry Services, Inc., to purchase, rebuild, and operate the 1964 Canadian-built vessel *Prince Nova*. Faced with an increased demand for its services and a shortage of suitable U.S.-built ferries, Cross Sound cannot purchase a domestically built vessel.

Cross Sound Ferry Services, a family owned, nonsubsidized operation, provides auto, truck, and high speed passenger service between Orient Point, NY, and New London, CT. According to the proposed waiver, Cross Sound will purchase the *Prince Nova*, and spend more than three times the purchase price, no less than $4.2 million, on the conversion, restoration, repair, rebuilding, or retrofitting of the ferry in a shipyard located in New London.

Cross Sound Ferry Service, a vital link between New England and eastern Long Island, provides an alternative mode of transportation that saves trucks and autos up to 200 miles in each direction, and reduces traffic, congestion, and wear on major roadways. From an environmental standpoint, ferry service reduces fuel consumption and pollution. Currently, the I–95 corridor throughout the Northeast is under a tremendous traffic burden. If the waiver is granted, it is expected that the new and expanded service the *Prince Nova* will provide will save 6 million miles and 360,000 travel hours.

Cross Sound's commitment to service the *Prince Nova* in a United States shipyard will create high-skilled, high-wage jobs. Additionally, this waiver will undoubtably better facilitate commerce and encourage economic development in the region by allowing consumers easier access to goods and services. Furthermore, it will provide businesses with an additional mode to transport their products.

An identical waiver was passed last week in the House of Representatives as part of the Coast Guard Authorization Act of 1997. It is our hope that it will receive the same favorable consideration in the Senate.

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. 1349

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

SECTION 1. DOCUMENTATION OF THE VESSEL PRINCE NOVA.

(a) DOCUMENTATION AUTHORIZED.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289), and section 12106 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade

for the vessel PRINCE NOVA (Canadian registration number 320804).

(b) EXPIRATION OF CERTIFICATE.—A certificate of documentation issued for the vessel under subsection (a) shall expire unless—

(1) the vessel undergoes conversion, reconstruction, repair, rebuilding, or retrofitting in a shipyard located in the United States;

(2) the cost of that conversion, reconstruction, repair, rebuilding, or retrofitting is not less than the greater of—

(A) 3 times the purchase value of the vessel before the conversion, reconstruction, repair, rebuilding, or retrofitting; or

(B) $4,200,000; and

(3) not less than an average of $1,000,000 is spent annually in a shipyard located in the United States for conversion, reconstruction, repair, rebuilding, or retrofitting of the vessel until the total amount of the cost required under paragraph (2) is spent.

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

S. 1350. A bill to amend section 332 of the Communications Act of 1934 to preserve State and local authority to regulate the placement, construction, and modification of certain telecommunications facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE TELECOMMUNICATIONS FACILITIES ACT OF 1997

Mr. LEAHY. Mr. President, I ask unanimous consent that a copy of my bill to preserve State and local authority to regulate the placement, construction, and modification of telecommunication facilities be printed in the RECORD.

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

S. 1350

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

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress make the following findings:

(1) The placement of commercial telecommunications, radio, or television towers near homes can greatly reduce the value of such homes, destroy the views from such homes, and reduce substantially the desire to live in such homes.

(2) States and localities should be able to exercise control over the construction and location of such towers through the use of zoning, planned growth, and other controls relating to the protection of the environment and public safety.

(3) There are alternatives to the construction of additional telecommunications towers to meet telecommunications needs, including the co-location of antennae on existing towers and the use of alternative technologies.

(4) On August 19, 1997, the Federal Communications Commission issued a proposed rule, MM Docket No. 97–182, which would preempt the application of State and local zoning and land use ordinances regarding the placement of telecommunications towers. It is in the interest of the Nation that the Commission not adopt this rule.

(5) It is in the interest of the Nation that the second memorandum opinion and order and notice of proposed rule making of the Commission with respect to application of such ordinances to the placement of such towers, WT Docket No. 97–192, ET Docket No. 93–62, and RM–8577, be modified in order to permit State and local governments to exercise their zoning and land use authorities, and their power to protect public health and safety, to regulate the placement of telecommunications towers and to place the burden of proof in civil actions relating to the placement of such towers on the person or entity that seeks to place, construct, or modify such towers.

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

(1) To repeal the limitations on the exercise of State and local authorities regarding the placement, construction, and modification of personal wireless service facilities that arise under section 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)).

(2) To permit State and local governments to regulate the placement, construction, and modification of such facilities on the basis of the environmental effects of the operation of such facilities.

(3) To prohibit the Federal Communications Commission from adopting rules which would preempt State and local regulation of the placement of such facilities.

SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT, CONSTRUCTION, AND MODIFICATION OF CERTAIN TELECOMMUNICATIONS FACILITIES.

(a) REPEAL OF LIMITATIONS.—Section 332(c)(7)(B) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(B)) is amended—

(1) in clause (i), by striking ''thereof—'' and all that follows through the end and inserting ''thereof shall not unreasonably discriminate among providers of functionally equivalent services.'';

(2) by striking clause (iv);

(3) by redesignating clause (v) as clause (iv); and

(4) in clause (iv), as so redesignated, by striking the third sentence and inserting the following: ''In any such action in which a person seeking to place, construct, or modify a tower facility is a party, such person shall bear the burden of proof.''.

(b) PROHIBITION ON ADOPTION OF RULE.—Notwithstanding any other provision of law, the Federal Communications Commission may not adopt as a final rule the proposed rule set forth in ''Preemption of State and Local Zoning and Land Use Restrictions on Siting, Placement and Construction of Broadcast Station Transmission Facilities'', MM Docket No. 97–182, released August 19, 1997.

Mr. JEFFORDS. Mr. President, I rise today to continue a discussion that my colleague, Senator LEAHY, began earlier, with regard to the Federal Communications Commission proposed rulemaking on regulations for wireless and digital broadcast facilities.

University of Vermont instructor and landscape designer Jean Veissering recently stated ''We have a real spiritual connection with hilltops. They tend to be almost sacred ground. Building something jarringly out of character upon them seems almost like a sacrilege.'' Mr. President, I share Jean's sentiments completely. In addition, it is the beautiful views of the majestic mountain ranges that in many ways defines what Vermont is all about.

Vermonters take great pride in their heritage as a State committed to the ideals of freedom and unity. That heritage goes hand and hand with a unique quality of life and the desire to grow and develop while maintaining Vermont's beauty and character. Ethan Allan and his Green Mountain Boys and countless other independent minded Vermonters helped shape the Nation's 14th State while making outstanding contributions to the independence of this country. Today, that independence still persists in the hills and valleys of Vermont. Vermonters have worked hard over the years to maintain local control over issues that impact them directly.

Throughout my years in Congress, I fought hard to protect the ability of Vermonters to step out of their kitchen doors and see an unobstructed view. Thousands of Americans travel to Vermont each year to take in the splendid nature of the State.

However, Vermont could have looked quite different if it were not for some foresight on behalf of several Vermonters. In the 1960's, the State of Vermont was entering into a period of unchecked development. In response, Governor Dean C. Davis created the Commission on Environmental Control in May of 1969. The commission drafted a set of recommendations to help manage the precious resources of the State.

As the attorney general for the State at that time, I was one of the primary drafters of an environmental land use law which would later become known as Act 250. Act 250 was specifically written to control development, not to stop development, and in turn, this act has led Vermont to economic prosperity through balanced environmental protection.

After reviewing the Commission on Environmental Control's recommendation and the proposed legislation, Governor Davis made one very basic, but important change in the legislation. The proposed legislation had called for a State agency to administer the act. The Governor was adamant in his belief that the control should be as close to the people as possible. It is that control which the FCC's proposed rulemaking is looking to preempt.

Governor Davis' recommendation led to placing the permitting process in the hands of local environmental review boards with appeal rights to the Vermont Environmental Board. Thus, the act is administered by men and women who are directly involved in their communities and thoroughly familiar with local concerns.

When reviewing an application for new development, the local environmental review boards take into account the economic needs of the State along with regional concerns. The review board's underlying goal is to direct the impact of development toward the positive. The positive approach has led to a high priority on preserving the environment, protecting the natural resources, and maintaining the quality of life of all Vermonters.

On October 9, 1997, the State of Vermont Environmental Board filed comments with the Federal Communications Commission that stated: ''Far from being an impediment to personal wireless service deployment, Vermont's Act 250 demonstrates that the

path to economic prosperity is through balanced environmental protection, not preemption of such protection.'' I share the board's sentiments and feel that the FCC should take no further steps to preempt Vermont's Act 250 with respect to personal wireless service facilities.

Mr. President, the Green Mountain State has unique topography, dominated by rolling valleys and tall mountains. In turn, the citizens of the State have taken many steps to help preserve the beautiful views and pristine environment. The determination of the location of visible transmission towers should remain within the jurisdiction of local control. I feel that the Telecommunication Act of 1996 recognizes and protects the interest of local and State government in the area of land use regulation.

As the attorney general of the State of Vermont at the time of the enactment of Act 250, I am proud of the role I and many other Vermonters played in the subsequent management of the precious natural resources of the State. I support Act 250 and feel that the placement of communications towers should be left in the hands of the residents of Vermont not by a Federal agency.

I have written to the Chairman of the FCC with regard to my concerns about this proposed rulemaking. In addition, yesterday the Senate confirmed William Kennard to be the next Chairman of the FCC. Upon his confirmation, I wrote a letter to Chairman Kennard personally inviting him to the State of Vermont to see first hand how this proposed rulemaking would impact the State. I hope that he will join me on a tour of the State which will demonstrate to him the importance of local control with respect to the placement of broadcast facilities. Further, I look forward to explaining how Act 250 has allowed for the development of wireless communication in the State while protecting the environment.

Mr. President, in conclusion, I want to commend Mr. LEAHY for introducing this very important legislation for the State of Vermont. I am pleased to be a cosponsor and I look forward to working with him to protect Vermont's interests unique landscape.

By Mr. BURNS:

S. 1351. A bill to amend the Sikes Act to establish a mechanism by which outdoor recreation programs on military installations will be accessible to disabled veterans, military dependents with disabilities, and other persons with disabilities; to the Committee on Armed Services.

THE DISABLED SPORTSMEN'S ACCESS ACT

Mr. BURNS. Madam President, I rise today to introduce the Disabled Sportsmen's Access Act. This legislation will provide new opportunities for sportsmen with disabilities to hunt and fish on the numerous Department of Defense facilities across this Nation. This legislation will also allow the Department of Defense to work with private sector groups to build facilities and operate programs for the benefit of sportsmen with disabilities.

The beginnings of this legislation originate from a program developed at the Marine Corps Base at Quantico, VA. The program, run by Lt. Col. Lewis Deal, is a prime example of the work that can be done to provide new opportunities for people with disabilities. Lieutenant Colonel Deal has combined private sector volunteers work with donations from other people to build permanent disabled accessible blinds for deer hunting, which are used during both gun and bow seasons. These blinds provide people living with disabilities many of the same opportunities for outdoor recreation that we all enjoy.

There are plans underway at this time to construct a fishing pier on the Potomac River for access by people with disabilities. This pier is to be built with lower railings, and stops to provide access and security for disabled persons.

This legislation, uses the current program at Quantico, to allow the Department of the Defense to provide access to it's 30 million acres of wildlands by disabled individuals, as long as it does not interfere with the primary mission of the military, that of our Nation's defense. The military installations around the Nation offer a number of recreational and outdoor activities for both military and civilian personnel.

This legislation, will encourage the Department of Defense to give access to individuals with disabilities and allow the Department to accept donations or money and materials as well as use volunteers for the construction of facilities accessible to sportsmen with disabilities. The bill would allow this voluntary work to be done without cost to the Federal Government or the taxpayer.

Madam President, this legislation has the support of numerous organizations, including the bipartisan Congressional Sportsmen's Caucus, the Paralyzed Veterans of America, Disabled American Veterans. Among sportsmen's groups the bill has the endorsement of the Wheeling Sportsmen of America, Safari Club International, Wildlife Management Institute, the International Association of Fish and Wildlife Agencies and the Congressional Sportsmen's Foundation. I join today with my friend Congressman DUKE CUNNINGHAM to bring this important legislation to the attention of my colleagues.

I hope that all my colleagues in Congress would join Congressman CUNNINGHAM and myself in supporting this legislation for disabled sportsmen in our country.

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 678

At the request of Mr. LEAHY, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 678, a bill to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

S. 766

At the request of Ms. SNOWE, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 813

At the request of Mr. THURMOND, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of S. 813, a bill to amend chapter 91 of title 18, United States Code, to provide criminal penalties for theft and willful vandalism at national cemeteries.

S. 1096

At the request of Mr. KERREY, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1096, a bill to restructure the Internal Revenue Service, and for other purposes.

S. 1105

At the request of Mr. COCHRAN, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1105, a bill to amend the Internal Revenue Code of 1986 to provide a sound budgetary mechanism for financing health and death benefits of retired coal miners while ensuring the long-term fiscal health and solvency of such benefits, and for other purposes.

S. 1153

At the request of Mr. BAUCUS, the names of the Senator from Nevada [Mr. BRYAN] the Senator from California [Mrs. FEINSTEIN], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 1153, a bill to promote food safety through continuation of the Food Animal Residue Avoidance Database program operated by the Secretary of Agriculture.

S. 1194

At the request of Mr. KYL, the names of the Senator from Tennessee [Mr. FRIST] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 1194, a bill to amend title XVIII of the Social Security Act to clarify the right of medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the medicare program.

S. 1228

At the request of Mr. CHAFEE, the names of the Senator from West Virginia [Mr. ROCKEFELLER] and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 1228, a bill to