S. 459. A bill to amend the Native American Programs Act of 1974 to extend certain authorizations, and for other purposes; to the Committee on Indian Affairs.

By Mr. BOND (for himself, Ms. SNOWE, Mr. NICKLES, Mr. BURNS, Mr. WARNER, Mr. FAIRCLOTH, Mr. MURKOWSKI, Mr. INHOFE, Mr. ENZI, Mr. HUTCHINSON, Mr. MACK, Ms. MIKULSKI, and Mr. GRAMS):

S. 460. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. INHOFE, and Mr. HELMS):

S. 461. A bill to amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MACK (for himself, Mr. D'AMATO, Mr. BOND, Mr. FAIRCLOTH, and Mr. GRAMS):

S. 462. A bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COATS:

S. 463. A bill to amend the Solid Waste Disposal Act to permit a Governor to limit the disposal of out-of-State solid waste in the Governor's State, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. MURRAY:

S. 464. A bill to amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error; to the Committee on Veterans Affairs.

By Mr. DORGAN (for himself, Mr. BYRD, and Mr. SARBANES):

S. 465. A bill to establish an Emergency Commission To End the Trade Deficit; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. KENNEDY, Mr. KERRY, Mrs. FEINSTEIN, and Mr. TORRICELLI):

S. 466. A bill to reduce gun trafficking by prohibiting bulk purchases of handguns; to the Committee on the Judiciary.

By Mr. WELLSTONE (for himself, Mrs. MURRAY, Mr. WYDEN, and Mr. DORGAN):

S. 467. A bill to prevent discrimination against victims of abuse in all lines of insurance; to the Committee on Labor and Human Resources.

By Mr. CHAFEE (for himself and Mr. MOYNIHAN):

S. 468. A bill to continue the successful Federal role in developing a national intermodal surface transportation system, through programs that ensure the safe and efficient movement of people and goods, improve economic productivity, preserve the environment, and strengthen partnerships among all levels of the government and the private sector, and for other purposes; to the Committee on Finance.

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

S. 469. A bill to designate a portion of the Sudbury, Assabet and Concord Rivers as a component of the National Wild and Scenic River System; to the Committee on Energy and Natural Resources.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 470. A bill to amend the Internal Revenue Code of 1986 to make a technical correction relating to the depreciation on property used within an Indian reservation; to the Committee on Finance.

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

S.J. Res. 23. A joint resolution expressing the sense of the Congress that the Attorney General should exercise her best professional judgement, without regard to political pressures, on whether to invoke the independent counsel process to investigate alleged criminal misconduct relating to any election campaign; read twice.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. ROBB:

S. Res. 64. A resolution to designate the week of May 4, 1997, as ''National Correctional Officers and Employees Week''; to the Committee on the Judiciary.

By Mr. DURBIN (for himself and Mr. DORGAN):

S. Res. 65. A bill to express the sense of the Senate on consideration of comprehensive campaign finance reform; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. MOSELEY-BRAUN (for herself, Mr. KENNEDY, Mr. GRAHAM, Mr. KERRY, Mr. LEVIN, Mr. TORRICELLI, Mrs. MURRAY, Ms. MIKULSKI, Mr. DODD, and Mr. WELLSTONE):

S. 456. A bill to establish a partnership to rebuild and modernize America's school facilities; to the Committee on Labor and Human Resources.

THE PARTNERSHIP TO REBUILD AMERICA'S SCHOOLS ACT OF 1997

Ms. MOSELEY-BRAUN. Mr. President, I send to the desk, and I am pleased to introduce, along with a number of my colleagues, the Partnership To Rebuild America's School Act of 1997. This legislation is designed to address one of the most fundamental problems that we currently face as a nation with regard to public elementary and secondary education: many of our schools are literally falling down around our children. This legislation will help us address this problem, the crisis of crumbling schools in America.

On Friday, the President officially transmitted this legislation to the Congress. The bill is the result of months of work by the Department of Education, the Department of the Treasury, the White House, my office, and a number of other congressional offices.

At the outset, I commend and thank everyone who has participated in the development of this legislation for their efforts.

Mr. President, the Partnership To Rebuild America's Schools Act of 1997 will help States and local school districts finance the repair, renovation, modernization and construction of their schools. States and school districts will be able to use the Federal funds to assist them in financing their highest priority projects.

This bill will allow school districts to do more of what they need to be doing, educating our children for the 21st century.

In America, the rungs on the ladder of opportunity are still crafted in the classroom. High school graduates earn, on average, 46 percent more every year than those who do not graduate. College graduates earn 155 percent more every year than those who do not graduate from high school. Over the course of a lifetime, the most educated Americans will earn five times as much as the least educated.

Education, however, is not just a matter of individual benefit. It is a public good as well. It affects and correlates to the status and the quality of life for our entire community. It correlates to just about every indicia of economic and social well-being. Educational attainment can be directly tied to income, health, the likelihood of being on welfare, the likelihood of being incarcerated, and the likelihood of voting and participating in our democracy. Education, therefore, has both national as well as individual implications.

In a recent Wall Street Journal survey of leading U.S. economists, 43 percent of those surveyed said the single most important thing that we could do to increase our long-term economic growth rate would be to invest more in education and research and development. Nothing else even came close to education in the survey. One economist said, ''One of the few things that economists will agree upon is the fact that economic growth is very strongly dependent on our own abilities.''

In his State of the Union Address, President Clinton noted that education is a critical national security issue for our future. I believe this notion should be at the heart of our debate over education.

In order to compete with cheap, Third World labor in a global economy, in an information age, and to maintain the standard of living to which we have grown accustomed as Americans, we will have to have a work force that works smarter, that works better, that can hold its own in this global economy at the high end of the productivity scale.

So education then becomes a matter of national concern and, indeed, as the President pointed out, a matter of our national security, because it is directly linked to our ability to be able to maintain the standard of living that we have come to appreciate as Americans and our ability to compete in this global marketplace.

We all have a role to play. That is why this legislation starts off calling itself a partnership, because there must be a partnership between State, local and National Government to

meet the challenge that this global economy, and changes in the world, have given us all to face.

The Partnership To Rebuild America's Schools Act of 1997 will help us to meet the challenge by investing in education in ways that preserve the fundamental tenet of local control of education.

By investing in bricks and mortar the Federal Government can contribute to a more balanced partnership among all levels of Government and in the private sector to rebuild and modernize our schools so they can serve all of our children in the 21st century. This legislation strikes that balance. This legislation does preserve local control, but, much to the point, it says that we at the national level have an obligation to participate in addressing those needs that can be most appropriately addressed at the national level; and that is rebuilding our crumbling schools.

The bill uses 5 billion Federal dollars to leverage an additional $15 billion worth of State, local and private resources. Half of the money will be apportioned to States using the existing Title I basic grants formula. The remainder will flow directly to the 100 school districts in the country with the largest numbers of children living below the poverty level.

Of the amount available for direct assistance to these impoverished communities, the Department of Education will apportion 70 percent by formula and will make the remaining 30 percent available on a competitive basis.

In addition, the bill will allocate 2 percent of the funds to the Secretary of the Interior for administration to Indian schools and to the Secretary of Education for the outlying territories.

Under both the State and local programs, States and school districts would have an enormous amount of flexibility in the use of these Federal funds to help finance school improvement projects. They could use the funds to subsidize State or local bond issues, certificates of participation, purchase or lease agreements, or other financial transactions used to finance school improvements.

In addition, the States would be allowed to capitalize on entities similar to the State infrastructure banks which are currently used by a number of States to help finance highway improvement projects. These infrastructure banks could be used to leverage additional resources.

This program is designed to stimulate new construction and renovation, and there are specific provisions in the bill to ensure that Federal funds are not used simply to finance school improvements that would have occurred anyway. The bill is designed to fill a real need that exists at both the State and local levels for school financing assistance, not to supplement districts that would have otherwise been able to finance their projects.

It is carefully crafted to minimize administrative costs at the Federal level and to maximize local control over decisions that must be made with regard to school improvements.

States and districts will be required to submit applications to the Secretary of Education describing their needs and the process that will be used to award the Federal funds. Once these applications are approved, grantees will immediately receive the full share of the $5 billion.

In addition, other than following certain criteria, States and local districts will be free to finance their top-priority projects. The Federal Government will not be in the business of dictating priorities and needs to State and local school districts who know their schools best.

This bill helps address a need that has completely overwhelmed States and local school districts. The magnitude of the school facilities problem is so great today that many districts cannot maintain the kind of educational environment necessary to teach all of our children the kind of skills they will need to compete in the 21st century, global economy.

The U.S. General Accounting Office, which at my request conducted an intensive 2-year study of the condition of America's schools, recently concluded that 14 million children attend schools in need of major renovations or outright replacement, and 7 million children attend schools with life-threatening safety code violations. They found that it will cost $112 billion to essentially bring schools up to code, not to equip them with new computers and cosmetic improvements, but just to address the toll that decades of deferred maintenance have taken on our Nation's school facilities.

That $112 billion price tag, as enormous as it may sound, does not include the cost of wiring schools for modern technology. One of the greatest barriers to the incorporation of modern computers into the classroom is the physical condition of many school buildings. You cannot very well use a computer if you do not have the electrical system to plug it into the wall. Too many schools across the country do not have the physical capacity to provide our youngsters with the instruments they will need in order to be educated for this information age.

According to the General Accounting Office, almost half of all schools lack enough electrical power for the full-scale use of computers, 60 percent of them lack enough conduits in the walls to connect classroom computers to a network, and more than 60 percent lack enough phone lines for instructional use.

For this generation, computers really are the functional equivalent of books. My son sometimes is amazed that computers were not around when I was in school. The fact of the matter is, though, that many of our schools were built before the advent of these technologies, and they have not been upgraded so that modern teaching tools can be used in the classroom. Our youngsters need modern technology if they are to be prepared for this information age and for this global economy.

That $112 billion price tag also does not include the cost of expanding capacity to accommodate soaring enrollments. According to the U.S. Department of Education, just to keep up with growing enrollment, we will need to build 6,000 new schools over the next 10 years.

Teachers and parents know full well that these conditions directly affect the ability of children to learn. Recent research, however, has lent scientific proof to that intuitive knowledge. Two separate studies found a 10 to 11 percent achievement gap between students in good school buildings and those in poor school buildings after controlling for all other factors.

Other studies have found that when buildings are in poor condition, students are more likely to misbehave. That should come as no surprise to parents. Three leading researchers in this area recently concluded, ''Based on our research, there is no doubt that building condition affects academic performance.''

Mr. President, this legislation is in the interest, I believe, of not just the children of America who have to go to these school buildings, many of which are dilapidated and rundown and neglected, but it is also in the interest of communities that will need the help to finance school repairs, and it is in the interest of our Nation that will need to have an educated work force.

Mr. President, the current system of school finance, which relies primarily on local property taxes, is not flexible enough to meet the enormous needs of our Nation's schools. This country, I believe, needs a new approach to solve the problem of crumbling schools, a partnership among all levels of government and the private sector that preserves local control of education, but creates some balance, and infuses, frankly, a little more reason into our school finance system that does not now adequately serve the schools, the children, the country, or the local property taxpayers.

The Department of Education has looked closely at a number of communities around the country and assessed the effect that this legislation would have on their ability to finance their construction needs. The Department looked at, for example, Los Angeles. Most of the school buildings there are more than 40 years old and are not wired for technology. Mr. President, 245 schools need roof replacements, and 50 of them need new boilers. According to the Department, this legislation could accelerate many long overdue projects and facilitate the passage of bond referenda at the local level.

The Department also looked at the State of Maine, which has many 100-year-old buildings and one-room

schoolhouses. According to the Department, most districts in that State cannot cover the total cost of bonds issued to finance repair and modernization projects. Again, this legislation would allow needed projects to go forward.

The Department also looked at a school district in southern Florida suffering from severe overcrowding. Mr. President, 34,000 students in that district do not have permanent desks. There are 10,000 new students added to the system each year. The district would have to build a new school every month to keep up with this demand. According to the Department this legislation will help this district move away from the use of portable classrooms, which do not provide as conducive a learning environment as real schools.

My own State of Illinois would benefit greatly from this legislation. As the GAO reported last week, my State has unfortunately one of the most inequitable school finance systems in the Nation. With a low State contribution to school resources, and with a poor State effort to target funds to the neediest districts, local property taxpayers in Illinois are saddled with almost 60 percent of the costs of educating their children. It is no wonder, then, that the State board of education estimates that Illinois' construction needs are $13 billion. Too many of Illinois' school districts have a difficult time even providing textbooks and pencils, let alone major capital improvements. This legislation would free up local resources in Illinois for education by providing Federal support for the construction, rehabilitation and renovation of the school buildings.

I urge all my colleagues to take a close look at the needs of the schools in their States and consider joining us in cosponsoring this legislation. This initiative is not about partisan politics. In fact, I think most Americans would agree wholeheartedly with the President when he said that partisan politics should stop at the schoolhouse door. This is something that transcends partisan differences and goes to the heart of our ability to provide for our children's well-being and their needs going into the 21st century.

Congress has a unique opportunity to take a fundamentally new approach to improving the quality of elementary and secondary education. This bill represents a chance to improve our system of school finance and help prepare our children for the 21st century. I believe this will be welcomed by taxpayers at the local level, particularly those who, at this point, are unfairly burdened with the costs of trying to keep up a school system that deserves the support of all levels of government in our country.

Mr. President, I have several documents from the Department of Education that I would like to have printed in the RECORD. I have the letter of transmittal from the Secretary of Education to the President of the Senate, a fact sheet regarding the correlation between building conditions and student achievement, and seven case studies assessing the impact this legislation would have on communities across America. I ask unanimous consent that these materials, as well as the text of the bill itself, be printed at this point in the RECORD.

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

S. 456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the ''Partnership to Rebuild America's Schools Act of 1997.''

TITLE I—SCHOOL CONSTRUCTION ASSISTANCE PROGRAM

TABLE OF CONTENTS

SEC. 101. The table of contents for this Act is as follows:

PART 1—PROGRAM AUTHORIZED

FINDINGS AND PURPOSE

SEC. 102. (a) FINDINGS.—The Congress finds as follows:

(1) According to the General Accounting Office, one-third of all elementary and secondary schools in the United States, serving 14,000,000 students, need extensive repair or renovation.

(2) School infrastructure problems exist across the country, but are most severe in central cities and in schools with high proportions of poor and minority children.

(3) Many States and school districts will need to build new schools in order to accommodate increasing student enrollments; the Department of Education has predicted that the Nation will need 6,000 more schools by the year 2006.

(4) Many schools do not have the physical infrastructure to take advantage of computers and other technology needed to meet the challenges of the next century.

(5) While school construction and maintenance are primarily a State and local concern, States and communities have not, on their own, met the increasing burden of providing acceptable school facilities for all students, and the poorest communities have had the greatest difficulty meeting this need.

(6) The Federal Government, by providing interest subsidies and similar types of support, can lower the costs of State and local school infrastructure investment, creating an incentive for States and localities to increase their own infrastructure improvement efforts and helping ensure that all students are able to attend schools that are equipped for the 21st century.

(b) PURPOSE.—The purpose of this Act is to provide Federal interest subsidies, or similar assistance, to States and localities to help them bring all public school facilities up to an acceptable standard and build the additional public schools needed to educate the additional numbers of students who will enroll in the next decade.

DEFINITIONS

SEC. 103. Except as otherwise provided, as used in this Act, the following terms have the following meanings:

(1) CHARTER SCHOOL.—The term ''charter school'' has the meaning given that term in section 10306(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8066(1)).

(2) COMMUNITY SCHOOL.—The term ''community school'' means a school, or part of a school, that serves as a center for afterschool and summer programs and the delivery of education, tutoring, cultural, and recreational services, and as a safe haven for all members of the community by—

(A) collaborating with other public and private nonprofit agencies (including libraries and other educational, human-service, cultural, and recreational entities) and private businesses in the provision of services;

(B) providing services such as literacy and reading programs; senior citizen programs; children's day-care services; nutrition services; services for individuals with disabilities; employment counseling, training, and placement; and other educational, health, cultural, and recreational services; and

(C) providing those services outside the normal school day and school year, such as through safe and drug-free safe havens for learning.

(3)(A) CONSTRUCTION.—The term ''construction' means——

(i) the preparation of drawings and specifications for school facilities;

(ii) erecting, building, acquiring, remodeling, renovating, improving, repairing, or extending school facilities;

(iii) demolition, in preparation for rebuilding school facilities; and

(iv) the inspection and supervision of the construction of school facilities.

(B) The term ''construction'' does not include the acquisition of any interest in real property.

(4) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given that term in section 14101(18) (A) and (B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18) (A) and (B)).

(5) SCHOOL FACILITY.—(A) The term ''school facility'' means—

(i) a public structure suitable for use as a classroom, laboratory, library, media center, or related facility, whose primary purpose is the instruction of public elementary or secondary students; and

(ii) initial equipment, machinery, and utilities necessary or appropriate for school purposes.

(B) The term ''school facility'' does not include an athletic stadium, or any other structure or facility intended primarily for athletic exhibitions, contests, games, or events for which admission is charged to the general public.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(7) STATE.—The term ''State'' means each of the 50 States and the Commonwealth of Puerto Rico.

(8) STATE EDUCATIONAL AGENCY.—The term ''State educational agency'' has the meaning given that term in section 14101(28) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(28)).

FUNDS APPROPRIATED

SEC. 104. There are appropriated $5,000,000,000 for the purpose of carrying out this Act, which shall be available for obligation by the Secretary of Education from October 1, 1997 until September 30, 2001.

ALLOCATION OF FUNDS

SEC. 105. (a) RESERVATION FOR THE SECRETARY OF THE INTERIOR AND THE OUTLYING AREAS.—(1) The Secretary shall reserve up to two percent of the funds appropriated by section 104 to—

(A) provide assistance to the Secretary of the Interior, which the Secretary of the Interior shall use for the school construction priorities described in section 1125(c) of the Education Amendment of 1978 (25 U.S.C. 2005(c)); and

(B) make grants to America Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, in accordance with their respective needs, as determined by the Secretary.

(2) Grants provided under paragraph (1)(B) shall be used for activities that the Secretary determines best meet the school infrastructure needs of the areas identified in that paragraph, subject to the terms and conditions, consistent with the purpose of this Act, that the Secretary may establish.

(b) ALLOCATION OF REMAINING FUNDS.—Of the remaining funds appropriated by section 104—

(1) 50 percent shall be used for formula grants to States under section 111;

(2) 35 percent shall be used for direct formula grants to local educational agencies under section 126; and

(3) 15 percent shall be used for competitive grants to local educational agencies under section 127.

PART 2—GRANTS TO STATES

ALLOCATION OF FUNDS

SEC. 111. (A) FORMULA GRANTS TO STATES.—Subject to subsection (b), the Secretary shall allocate the funds available under section 105(b)(1) among the States in proportion to the relative amounts each State would have received for Basic Grants under subpart 2 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331 et seq.) for the most recent fiscal year if the Secretary had disregarded the numbers of children counted under that subpart who were enrolled in schools of local educational agencies that are eligible to receive direct grants under section 126 of this Act.

(b) ADJUSTMENTS TO ALLOCATIONS.—The Secretary shall adjust the allocations under subsection (a), as necessary, to ensure that, of the total amount allocated to State under subsection (a) and to local educational agencies under section 126, the percentage allocated to a State under this section and to localities in the State under section 126 is at least the minimum percentage for the State described in section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334(d)) for the previous fiscal year.

(c) REALLOCATIONS.—If a State does not apply for its allocation, applies for less than its full allocation, or fails to submit an approvable application, the Secretary may reallocate all or a portion of the State's allocation, as the case may be, to the remaining States in the same proportions as the original allocations were made to those States under subsections (a) and (b).

ELIGIBLE STATE AGENCY

SEC. 112. The Secretary shall award each State's grant to the State agency, such as a State educational agency, a State school construction agency, or a State bond bank, that the Governor, with the agreement of the chief State school officer, designates as best able to administer the grant.

ALLOWABLE USES OF FUNDS

SEC. 113. Each State shall use its grant under this part only for one or more of the following activities to subsidize the cost of eligible school construction projects described in section 114:

(1) Providing a portion of the interest cost (or of another financing cost approved by the Secretary) on bonds, certificates of participation, purchase or lease arrangements, or other forms of indebtedness issued or entered into by a State or its instrumentality for the purpose of financing eligible projects.

(2) State-level expenditures approved by the Secretary for credit enhancement for the debt or financing instruments described in paragraph (1).

(3) Making subgrants, or making loans through a State revolving fund, to local educational agencies or (with the agreement of the affected local educational agency) to other qualified public agencies to subsidize—

(A) the interest cost (or another financing cost approved by the Secretary) of bonds, certificates of participation, purchase or lease arrangements, or other forms of indebtedness issued or entered into by a local educational agency or other agency or unit of local government for the purpose of financing eligible projects; or

(B) local expenditures approved by the Secretary for credit enhancement for the debt or financing instruments described in subparagraph (A).

(4) Other State and local expenditures approved by the Secretary that leverage funds for additional school construction.

ELIGIBLE CONSTRUCTION PROJECTS; PERIOD FOR INITIATION

SEC. 114 (a) ELIGIBLE PROJECTS.—States and their subgrantees may use funds under this part, in accordance with section 113, to subsidize the cost of—

(1) construction of elementary and secondary school facilities in order to ensure the health and safety of all students, which may include the removal of environmental hazards; improvements in air quality, plumbing, lighting, heating and air conditioning, electrical systems, or basic school infrastructure; and building improvements that increase school safety;

(2) construction activities needed to meet the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(3) construction activities that increase the energy efficiency of school facilities;

(4) construction that facilitates the use of modern educational technologies;

(5) construction of new school facilities that are needed to accommodate growth in school enrollments; or

(6) construction projects needed to facilitate the establishment of charter schools and community schools.

(b) PERIOD FOR INITIATION OF PROJECT.—(1) Each State shall use its grant under this part only to subsidize construction projects described in subsection (a) that the State or its localities have chosen to initiate, through the vote of a school board, passage of a bond issue, or similar public decision, made between July 11, 1996 and September 30, 2001.

(2) If a State determines, after September 30, 2001, that an eligible project for which it has obligated funds under this part will not be carried out, the State may use those funds (or any available portion of those funds) for other eligible projects selected in accordance with this part.

(c) REALLOCATION.—If the Secretary determines, by a date before September 30, 2001 selected by the Secretary, that a State is not making satisfactory progress in carrying out its plan for the use of the funds allocated to it under this part, the Secretary may reallocate all or part of those funds, including any interest earned by the State on those funds, to one or more other States that are making satisfactory progress.

SELECTION OF LOCALITIES AND PROJECTS

SEC. 115. (a) PRIORITIES.—In determining which localities and activities to support with grant funds, each State shall give the highest priority to—

(1) localities with the greatest needs, as demonstrated by inadequate educational facilities, coupled with a low level of resources available to meet school construction needs; and

(2) localities that will achieve the greatest leveraging effect on school construction from assistance under this part.

(b) ADDITIONAL CRITERIA.—In addition to the priorities required by subsection (a), each State shall consider each of the following in determining the use of its grant funds under this part:

(1) The condition of the school facilities in different communities in the State.

(2) The energy efficiency and the effect on the environment of projects proposed by communities, and the extent to which these projects use cost-efficient architectural design.

(3) The commitment of communities to finance school construction and renovation projects with assistance from the State's grant, as demonstrated by their incurring indebtedness or by similar public or private commitments for the purposes described in section 114(a).

(4) The ability of communities to repay bonds or other forms of indebtedness supported with grant funds.

(5) The particular needs, if any, of rural communities in the State for assistance under this Act.

(6) The receipt by local educational agencies in the State of grants under part 3, except that a local educational agency is not ineligible for a subgrant under this part solely because it receives such a grant.

STATE APPLICATIONS

SEC. 116. (a) APPLICATION REQUIRED.—A State that wishes to receive a grant under this part shall submit an application to the Secretary, in the manner the Secretary may require, not later than two years after the date of enactment of this Act.

(b) DEVELOPMENT OF APPLICATION.—(1) The State agency designated under section 112 shall develop the State's application under this part only after broadly consulting with the State board of education, and representatives of local school boards, school administrators, the business community, parents, and teachers in the State about the best means of carrying out this part.

(2) If the State educational agency is not the State agency designated under section

112, the designated agency shall consult with the State educational agency and obtain its approval before submitting the State's application.

(c) STATE SURVEY.—(1) Before submitting the State's application, the State agency designated under section 112, with the involvement of local school officials and experts in building construction and management, shall survey the need throughout the State (including in localities receiving grants under part 3) for construction and renovation of school facilities, including, at a minimum—

(A) the overall condition of school facilities in the State, including health and safety problems;

(B) the capacity of the schools in the State to house projected enrollments; and

(C) the extent to which the schools in the State offer the physical infrastructure needed to provide a high-quality education to all students.

(2) A State need not conduct a new survey under paragraph (1) if it has previously completed a survey that meets the requirements of that paragraph and that the Secretary finds is sufficiently recent for the purpose of carrying out this part.

(d) APPLICATION CONTENTS.—Each State application under this part shall include—

(1) an identification of the State agency designated by the Governor under section 112 to receive the State's grant under this party;

(2) a summary of the results of the State's survey of its school facility needs, as described in subsection (c);

(3) a description of how the State will implement its program under this part;

(4) a description of how the State will allocate its grant funds, including a description of how the State will implement the priorities and criteria described in section 115;

(5)(A) a description of the mechanisms that will be used to finance construction projects supported by grant funds; and

(B) a statement of how the State will determine the amount of the Federal subsidy to be applied, in accordance with section 117(a), to each local project that the State will support;

(6) a description of how the State will ensure that the requirements of this part are met by subgrantees under this part;

(7) a description of the steps the State will take to ensure that local educational agencies will adequately maintain the facilities that are constructed or improved with funds under this part;

(8) an assurance that the State will use its grant only to supplement the funds that the State, and the localities receiving subgrants, would spend on school construction and renovation in the absence of a grant under this part, and not to supplant those funds;

(9) an assurance that, during the four-year period beginning with the year the State receives its grant, the combined expenditures for school construction by the State and the localities that benefit from the State's program under this part (which at the State's option, may include private contributions) will be at least 125 percent of those combined expenditures for that purpose for the four preceding years; and

(10) other information and assurances that the Secretary may require.

(e) WAIVER OF REQUIREMENT TO INCREASE EXPENDITURES.—The Secretary may waive or modify the requirement of subsection (d)(9) for a particular State if the State demonstrates to the Secretary's satisfaction that that requirement is unduly burdensome because the State or its localities have incurred a particularly high level of school construction expenditures during the previous four years.

AMOUNT OF FEDERAL SUBSIDY

SEC. 117. (a) PROJECTS FUNDED WITH SUBGRANTS.—For each construction project assisted by a State through a subgrant to a locality, the State shall determine the amount of the Federal subsidy under this part, taking into account the number or percentage of children from low-income families residing in the locality, subject to the following limits:

(1) If the locality will use the subgrant to help meet the cost of repaying bonds issued for a school construction project, the Federal subsidy shall be not more than one-half of the total interest cost of those bonds, determined in accordance with paragraph (4).

(2) If the bonds to be subsidized are general obligation bonds issued to finance more than one type of activity (including school construction), the Federal subsidy shall be not more than one-half of the interest cost for that portion of the bonds that will be used for school construction purposes, determined in accordance with paragraph (4).

(3) If the locality elects to use its subgrant for an allowable activity not described in paragraph (1) or (2), such as for certificates of participation, purchase or lease arrangements, reduction of the amount of principal to be borrowed, or credit enhancements for individual construction projects, the Federal subsidy shall be not more than one-half of the interest cost, as determined by the State in accordance with paragraph (4), that would have been incurred if bonds had been used to finance the project.

(4) the interest cost referred to in paragraphs (1), (2), and (3) shall be—

(A) calculated on the basis of net present value; and

(B) determined in accordance with an amortization schedule and any other criteria and conditions the Secretary considers necessary, including provisions to ensure comparable treatment of different financing mechanisms.

(b) STATE-FUNDED PROJECTS.—For a construction project under this part funded directly by the State through the use of State-issued bonds or other financial instruments, the Secretary shall determine the Federal subsidy in accordance with subsection (a).

(c) NON-FEDERAL SHARE.—A State, and localities in the State receiving subgrants under this part, may use any non-Federal funds, including State, local, and private-sector funds, for the financing costs that are not covered by the Federal subsidy under subsection (a).

SEPARATE FUNDS OR ACCOUNTS; PRUDENT INVESTMENT

SEC. 118. (a) SEPARATE FUNDS OR ACCOUNTS REQUIRED.—Each State that receives a grant, and each recipient of a subgrant under this part, shall deposit the grant or subgrant proceeds in a separate fund or account, from which it shall make bond repayments and pay other expenses allowable under this part.

(b) PRUDENT INVESTMENT REQUIRED.—Each State that receives a grant, and each recipient of a subgrant under this part, shall—

(1) invest the grant or subgrant in a fiscally prudent manner, in order to generate amounts needed to make repayments on bonds and other forms of indebtedness described in section 113; and

(2) Notwithstanding section 6503 of title 31, United States Code or any other law, use the proceeds of that investment to carry out this part.

STATE REPORTS

SEC. 119. (a) REPORTS REQUIRED.—(1) Each State receiving a grant under this part shall report to the Secretary on its activities under this part, in the form and manner the Secretary may prescribe.

(2) If the State educational agency is not the State agency designated under section 112, the State's report shall include the approval of the State educational agency or its comments on the report.

(b) CONTENTS.—Each report shall—

(1) describe the State's implementation of this part, including how the State has met the requirements of this part;

(2) identify the specific school facilities constructed, renovated, or modernized with support from the grant, and the mechanisms used to finance those activities;

(3) identify the level of Federal subsidy provided to each construction project carried out with support from the State's grant; and

(4) include any other information the Secretary may require.

(c) FREQUENCY.—(1) Each State shall submit its first report under this section not later than 24 months after it receives its grant under this part.

(2) Each State shall submit an annual report for each of the three years after submitting its first report, and subsequently shall submit periodic reports as long as the State or localities in the State are using grant funds.

PART 3—DIRECT GRANTS TO LOCAL EDUCATIONAL AGENCIES

ELIGIBLE LOCAL EDUCATIONAL AGENCIES

SEC. 121. (a) ELIGIBLE AGENCIES.—Except as provided in subsection (b), the local educational agencies that are eligible to receive formula grants under section 126 and competitive grants under section 127 from the Secretary are the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary.

(b) CERTAIN JURISDICTIONS INELIGIBLE.—For the purpose of this part, the local educational agencies for Hawaii and the Commonwealth of Puerto Rico are not eligible local educational agencies.

GRANTEES

SEC. 122. For each local educational agency described in section 121(a) for which an approvable application is submitted, the Secretary shall make any grant under this part to the local educational agency or to another public agency, on behalf of the local educational agency, if the Secretary determines, on the basis of the local educational agency's recommendation, that the other agency is better able to carry out activities under this part.

ALLOWABLE USES OF FUNDS

SEC. 123. Each grantee under this part shall use its grant only for one or more of the following activities to reduce the cost of financing eligible school construction projects described in section 124:

(1) Providing a portion of the interest cost (or of any other financing cost approved by the Secretary) on bonds, certificates of participation, purchase or lease arrangements, or other forms of indebtedness issued or entered into by a local educational agency or other unit or agency of local government for the purpose of financing eligible school construction projects.

(2) Local expenditures approved by the Secretary for credit enhancement for the debt or financing instruments described in paragraph (1).

(3) Other local expenditures approved by the Secretary that leverage funds for additional school construction.

ELIGIBLE CONSTRUCTION PROJECTS; REDISTRIBUTION

SEC. 124. (a) ELIGIBLE PROJECTS.—A grantee under this part may use its grant, in accordance with section 123, to subsidize the cost of the activities described in section 114(a) for projects that the local educational agency has chosen to initiate, through the

vote of the school board, passage of a bond issue, or similar public decision, made between July 11, 1996 and September 30, 2001.

(b) REDISTRIBUTION.—If the Secretary determines, by a date before September 30, 2001 selected by the Secretary, that a local educational agency is not making satisfactory progress in carrying out its plan for the use of funds awarded to it under this part, the Secretary may redistribute all or part of those funds, and any interest earned by that agency on those funds, to one or more other local educational agencies that are making satisfactory progress.

LOCAL APPLICATIONS

SEC. 125. (a) APPLICATION REQUIRED.—A local educational agency, or an alternative agency described in section 122 (both referred to in this part as the ''local agency''), that wishes to receive a grant under this part shall submit an application to the Secretary, in the manner the Secretary may require, not later than two years after the date of enactment of this Act.

(b) DEVELOPMENT OF APPLICATION.—(1) The local agency shall develop the local application under this part only after broadly consulting with parents, administrators, teachers, the business community, and other members of the local community about the best means of carrying out this part.

(2) If the local educational agency is not the applicant, the applicant shall consult with the local educational agency, and shall obtain its approval before submitting its application to the Secretary.

(c) LOCAL SURVEY.—(1) Before submitting its application, the local agency, with the involvement of local school officials and experts in building construction and management, shall survey the local need for construction and renovation of school facilities, including, at a minimum—

(A) the overall condition of school facilities in the local educational agency, including health and safety problems;

(B) the capacity of the local educational agency's schools to house projected enrollments; and

(C) the extent to which the local educational agency's schools offer the physical infrastructure needed to provide a high-quality education to all students.

(2) A local educational agency need not conduct a new survey under paragraph (1) if it has previously completed a survey that meets the requirements of that paragraph and that the Secretary finds is sufficiently recent for the purpose of carrying out this part.

(d) APPLICATION CONTENTS.—Each local application under this part shall include—

(1) an identification of the local agency to receive the grant under this part;

(2) a summary of the results of the survey of school facility needs, as described in subsection (c);

(3) a description of how the local agency will implement its program under this part;

(4) a description of the criteria the local agency has used to determine which construction projects to support with grant funds;

(5) a description of the construction projects that will be supported with grant funds;

(6) a description of the mechanisms that will be used to finance construction projects supported by grant funds;

(7) a requested level of Federal subsidy, with a justification for that level, for each construction project to be supported by the grant, in accordance with section 128(a), including the financial and demographic information the Secretary may require;

(8) a description of the steps the agency will take to ensure that facilities constructed or improved with funds under this part will be adequately maintained;

(9) an assurance that the agency will use its grant only to supplement the funds that the locality would spend on school construction and renovation in the absence of a grant under this part, and not to supplant those funds;

(10) an assurance that, during the four-year period beginning with the year the local educational agency receives its grant, its expenditures for school construction (which, at that agency's option, may include private contributions) will be at least 125 percent of its expenditures for that purpose for the four preceding years; and

(11) other information and assurances that the Secretary may require.

(e) WAIVER OF REQUIREMENT TO INCREASE EXPENDITURES.—The Secretary may waive or modify the requirement of subsection (d)(10) for a local educational agency that demonstrates to the Secretary's satisfaction that that requirement is unduly burdensome because that agency has incurred a particularly high level of school construction expenditures during the previous four years.

FORMULA GRANTS

SEC. 126. (a) ALLOCATIONS.—The Secretary shall allocate the funds available under section 105(b)(2) to the local educational agencies identified under section 121(a) on the basis of their relative allocations under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) in the most recent year for which that information is available to the Secretary.

(b) REALLOCATIONS.—If a local educational agency does not apply for its allocation, applies for less than its full allocation, or fails to submit an approvable application, the Secretary may reallocate all or a portion of its allocation, as the case may be, to the remaining local educational agencies in the same proportions as the original allocations were made to those agencies under subsection (a).

COMPETITIVE GRANTS

SEC. 127. (a) GRANTS AUTHORIZED.—The Secretary shall use funds available under section 105(b)(3) to make additional grants, on a competitive basis, to recipients of formula grants under section 126.

(b) ADDITIONAL APPLICATION MATERIALS.—Any eligible applicant under section 126 that wishes to receive additional funds under this section shall include in its application under section 125 the following additional information:

(1) The amount of funds requested under this section, in accordance with ranges or limits that the Secretary may establish based on factors such as relative size of the eligible applicants.

(2) A description of the additional construction activities that the applicant would carry out with those funds.

(3) Information on the current financial effort the applicant is making for elementary and secondary education, including support from private sources, relative to its resources.

(4) Information on the extent to which the applicant will increase its own (or other public or private) spending for school construction in the year in which it receives a grant under this section, above the average annual amount for construction activity during the preceding four years.

(5) A description of the energy efficiency and the effect on the environment of the projects that the applicant will undertake, both with its grant under this section and its grant under section 126, and of the extent to which those projects will use cost-efficient architectural design.

(6) Other information that the Secretary may require.

(c) SELECTION OF GRANTEES.—The Secretary shall select grantees under this section on the basis of criteria, consistent with the purpose of this Act, that the Secretary may establish, which shall include—

(1) the relative need of applicants, as demonstrated by inadequate educational facilities and a low level of resources to meet their school construction needs;

(2) the commitment of applicants to meet their school construction needs and the leveraging effect that assistance under this part would have, as demonstrated by the additional resources that they will provide, from non-Federal sources, to meet those needs, in accordance with subsection (b)(4).

AMOUNT OF FEDERAL SUBSIDY

SEC. 128. (a) AMOUNT OF FEDERAL SUBSIDY.—For each construction project assisted under this part, the Secretary shall determine the amount of the Federal subsidy in accordance with section 117(a).

(b) NON-FEDERAL SHARE.—A grantee under this part may use any non-Federal funds, including State, local, and private-sector funds, for the financing costs that are not covered by the Federal subsidy under subsection (a).

SEPARATE FUNDS OR ACCOUNTS; PRUDENT INVESTMENT

SEC. 129. (a) SEPARATE FUNDS OR ACCOUNTS REQUIRED.—Each grantee under this part shall deposit the grant proceeds in a separate fund or account, from which it shall make bond repayments and pay other expenses allowable under this part.

(b) PRUDENT INVESTMENT REQUIRED.—Each granteee under this part shall—

(1) invest the grant funds in a fiscally prudent manner, in order to generate amounts needed to make repayments on bonds and other forms of indebtedness; and

(2) notwithstanding section 6503 of title 31, United States Code or any other law, use the proceeds of that investment to carry out this part.

LOCAL REPORTS

SEC. 130. (a) REPORTS REQUIRED.—(1) Each grantee under this part shall report to the Secretary on its activities under this part, in the form and manner the Secretary may prescribe.

(2) If the local educational agency is not the grantee under this part, the grantee's report shall include the approval of the local educational agency or its comments on the report.

(b) CONTENTS.—Each report shall—

(1) describe the grantee's implementation of this part, including how it has met the requirements of this part;

(2) identify the specific school facilities constructed, renovated, or modernized with support from the grant, and the mechanisms used to finance those activities; and

(3) other information the Secretary may require.

(c) FREQUENCY.—(1) Each grantee shall submit its first report under this section not later than 24 months after it receives its grant under this part.

(2) Each grantee shall submit an annual report for each of the three years after submitting its first report, and subsequently shall submit periodic reports as long as it is using grant funds.

TITLE II—GENERAL PROVISIONS

TECHNICAL EMPLOYEES

SEC. 201. For the purpose of carrying out this Act, the Secretary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, may appoint not more than 10 technical employees who may be paid without regard to the provisions of chapter 51 and subchapter IV of chapter 5 of that title relating

to classification and General Schedule pay rates.

WAGE RATES

SEC. 202. (a) PREVAILING WAGE.—The Secretary shall ensure that all laborers and mechanics employed by contractors and subcontractors on any project assisted under this Act are paid wages at rates not less than those prevailing as determined by the Secretary of Labor in accordance with the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq.). The Secretary of Labor has, with respect to this section, the authority and functions established in Reorganization Plan Numbered 14 of 1950 (effective May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(b) WAIVER FOR VOLUNTEERS.—Section 7305 of the Federal Acquisition Streamlining Act of 1994 (40 U.S.C. 276d–3) is amended—

(1) in paragraph (5), by striking out the ''and'' at the end thereof'

(2) in paragraph (6), by striking out the period at the end thereof and inserting a semicolon and ''and''; and

(3) by adding at the end thereof the following new paragraph:

''(7) The Partnership Rehabilitate America's Schools Act of 1997.''.

NO LIABILITY OF FEDERAL GOVERNMENT

SEC. 203. (a) NO FEDERAL LIABILITY.—Any financial instruments, including but not limited to contracts, bonds, bills, notes, certificates of participation, or purchase or lease arrangements, issued by States, localities or instrumentalities thereof in connection with any assistance provided by the Secretary under this Act are obligations of such States, localities or instrumentalities and not obligations of the United States and are not guaranteed by the full faith and credit of the United States.

(b) NOTICE REQUIREMENT.—Documents relating to any financial instruments, including but not limited to contracts, bonds, bills, notes, offering statements, certificates of participation, or purchase or lease arrangements, issued by States, localities or instrumentalities thereof in connection with any assistance provided under this Act, shall include a prominent statement providing notice that the financial instruments are not obligations of the United States and are not guaranteed by the full faith and credit of the United States.

CONSULTATION WITH SECRETARY OF THE TREASURY

SEC. 204. The Secretary shall consult with the Secretary of the Treasury in carrying out this Act.

U.S. DEPARTMENT OF EDUCATION,
THE SECRETARY
March 13, 1997.

Hon. ALBERT GORE, Jr.,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed for consideration of the Congress is the Partnership to Rebuild America's Schools Act of 1997, a bill that would provide a one-time Federal stimulus to help States and localities bring all public school facilities up to acceptable standards and build the additional schools needed to serve increasing enrollments. Also enclosed is a section-by-section analysis summarizing the contents of the bill. I am sending an identical letter to the Speaker of the House.

Mr. President, a number of factors have led the Administration to conclude that the Federal Government must assist the States and localities in providing the school facilities that our children will need if they are to achieve to challenging educational standards. First of all, recent General Accounting Office reports have documented the deplorable condition of too many of the Nation's schools. According to the GAO, one-third of all schools, serving more than 14 million students, need extensive repair or renovation of one or more buildings. Students are attending schools that have antiquated heating, plumbing, and electrical systems and even fail to meet local health and safety codes. Some schools do not provide full access to individuals with disabilities, and many do not have the infrastructure needed to adopt new educational technologies. All of these problems are most prevalent in urban districts.

In addition to making repairs and renovations to their existing schools, many districts will have to build new schools in order to accommodate increasing enrollments. In fact, the Department has projected that States and localities will need to build 6,000 more schools in order to serve an additional 2.9 million students who will enroll in the next decade. This need will put further pressure on already strained school budgets.

Clearly, school construction is, and will remain, primarily a State and local responsibility, and the vast majority of facilities needs will have to be met with non-Federal resources. Unfortunately, however, for a variety of reasons State and local governments have not been making substantial progress even in clearing the existing backlog of construction needs. The Federal Government can play a crucial role in addressing this problem by providing limited resources, on a one-time basis, in a manner that spurs States, communities, and even the private sector to bear the burden and provide adequate school facilities for all children. That is the purpose of the enclosed legislation.

In order to have maximum impact, our bill would leverage State, local, and private support for school construction, rather than paying for 100 percent of the cost of construction projects. The proposal would provide interest subsidies for school construction bonds, or other financing mechanisms, to States and major urban school districts. States would, in turn, pass these subsidies along to localities, use them to reduce the servicing costs of State bonds or other financing vehicles, use them to capitalize State revolving funds for school construction, or use them for other, similar purposes. The maximum amount of Federal subsidy would be the equivalent of 50 percent of the interest cost on bonds. Through this mechanism, every dollar of Federal money would be matched by a minimum of three dollars of State, local, or private money.

The Federal Government would not determine the specific construction projects that would be funded. Rather, States and localities would use the Federal subsidy for the costs of construction projects that reflect their highest needs, such as addressing health and safety problems or problems with air quality, plumbing, heating, and lighting; removal of architectural barriers in order to ensure access for individuals with disabilities; projects to increase energy efficiency; construction to facilitate the use of modern educational technologies; and new construction needed to accommodate increased enrollments. While the State and local recipients would have the flexibility to determine which of these types of construction activities are their highest priority, they would have to base their use of the Federal funds on a thorough survey of State or local school construction needs and use the funds in a manner consistent with several other general criteria such as, at the State level, awarding the subsidy to communities with the greatest construction needs and the least ability to meet those needs with their own resources.

Under the program, the Department would allocate one-half of a $5 billion mandatory appropriation to States using the existing ''Title I'' basic grants formula. The remainder would flow directly to the 100 districts that enroll the greatest numbers of children living in poverty; those urban districts, according to the GAO data, have far and away the greatest school construction needs. Of the amount available for direct assistance to urban districts, the Department would allocate seventy percent by formula, again on a Title I basis, and make the remainder available competitively to districts that have particularly severe needs and are willing to provide the most support for infrastructure improvements from non-Federal resources.

Under both the State and local programs, a critical objective would be to spur additional construction paid for with non-Federal dollars. For this reason, the bill would prohibit recipients from using the Federal funds to supplant State and local support for school construction. In addition, each State or locality receiving assistance would have to assure the Department that it will increase, over a four-year period, the amount of school construction paid for with non-Federal funds compared to the level expended during the preceding four-year period. These provisions would ensure that a one-time Federal stimulus has an impact far beyond the immediate benefit attributable to the Federal expenditures.

Administration of the program would be kept simple. The Department would make a single award to each State and locality receiving direct assistance. We would allow the recipients to invest the Federal funds in a prudent manner, and use the returns from that investment to meet bond payments and other costs. All of the mandatory appropriation would become available in fiscal year 1998, and all the payments would be made within a four-year period.

To summarize, our bill reflects the following principles: (1) The Federal Government should make available a one-time $5 billion mandatory appropriation to address the major national problem of inadequate school infrastructure; (2) The Federal funds will have their greatest impact if they are used to leverage additional State, local, and private effort rather than for direct support for the entire cost of construction projects; (3) Because the largest cities have the most school construction needs, and often the fewest resources for meeting those needs, they should receive a major share of the funding; and (4) States and localities should have the flexibility to use the Federal subsidy to carry out the construction projects they deem most important, but they should do so only after completing a careful survey of their construction needs. Further, both the States and the Federal Government should direct the subsidy to the most needy communities.

I urge the Congress to take prompt and favorable action on this proposal. Its enactment would spur States and communities nationwide to bring their school facilities up to the standard our children need and deserve.

The Office of Management and Budget advises that there is no objection to the submission of this proposal to the Congress and that its adoption would be in accord with the program of the President.

Yours sincerely,

RICHARD W. RILEY.

IMPACT OF INADEQUATE SCHOOL FACILITIES ON STUDENT LEARNING

A number of studies have shown that many school systems, particularly those in urban and high-poverty areas, are plagued by decaying buildings that threaten the health, safety, and learning opportunities of students. Good facilities appear to be an important precondition for student learning, provided that other conditions are present that

support a strong academic program in the school. A growing body of research has linked student achievement and behavior to the physical building conditions and overcrowding.

PHYSICAL BUILDING CONDITIONS

Decaying environmental conditions such as peeling paint, crumbling plaster, nonfunctioning toilets, poor lighting, inadequate ventilation, and inoperative heating and cooling systems can affect the learning as well as the health and the morale of staff and students.

Impact on student achievement

A study of the District of Columbia school system found, after controlling for other variables such as a student's socioeconomic status, that students' standardized achievement scores were lower in schools with poor building conditions. Students in school buildings in poor condition had achievement that was 6% below schools in fair condition and 11% below schools in excellent condition. (Edwards, 1991)

Cash (1993) examined the relationship between building condition and student achievement in small, rural Virginia high schools. Student scores on achievement tests, adjusted for socioeconomic status, was found to be up to 5 percentile points lower in buildings with lower quality ratings. Achievement also appeared to be more directly related to cosmetic factors than to structural ones. Poorer achievement was associated with specific building condition factors such as substandard science facilities, air conditioning, locker conditions, classroom furniture, more graffiti, and noisy external environments.

Similarly, Hines' (1996) study of large, urban high schools in Virginia also found a relationship between building condition and student achievement. Indeed, Hines found that student achievement was as much as 11 percentile points lower in substandard buildings as compared to above-standard buildings.

A study of North Dakota high schools, a state selected in part because of its relatively homogeneous, rural population, also found a positive relationship between school condition (as measured by principals' survey responses) and both student achievement and student behavior. (Earthman, 1995)

McGuffey (1982) concluded that heating and air conditioning systems appeared to be very important, along with special instructional facilities (i.e., science laboratories or equipment) and color and interior painting, in contributing to student achievement. Proper building maintenance was also found to be related to better attitudes and fewer disciplinary problems in one cited study.

Research indicates that the quality of air inside public school facilities may significantly affect students' ability to concentrate. The evidence suggests that youth, especially those under ten years of age, are more vulnerable than adults to the types of contaminants (asbestos, radon, and formaldehyde) found in some school facilities (Andrews and Neuroth, 1988).

Impact on teaching

Lowe (1988) interviewed State Teachers of the Year to determine which aspects of the physical environment affected their teaching the most, and these teachers pointed to the availability and quality of classroom equipment and furnishings, as well as ambient features such as climate control and acoustics as the most important environmental factors. In particular, the teachers emphasized that the ability to control classroom temperature is crucial to the effective performance of both students and teachers.

A study of working conditions in urban schools concluded that ''physical conditions have direct positive and negative effects on teacher morale, sense of personal safety, feelings of effectiveness in the classroom, and on the general learning environment.'' Building renovations in one district led teachers to feel ''a renewed sense of hope, of commitment, a belief that the district cared about what went on in that building.'' In dilapidated buildings in another district, the atmosphere was punctuated more by despair and frustration, with teachers reporting that leaking roofs, burned out lights, and broken toilets were the typical backdrop for teaching and learning.'' (Corcoran et al., 1988)

Corcoran et al. (1988) also found that ''where the problems with working conditions are serious enough to impinge on the work of teachers, they result in higher absenteeism, reduced levels of effort, lower effectiveness in the classroom low morale, and reduced job satisfaction. Where working conditions are good, they result in enthusiasm, high morale, cooperation, and acceptance of responsibility.''

A Carnegie Foundation (1988) report on urban schools concluded that ''the tacit message of the physical indignities in many urban schools is not lost on students. It bespeaks neglect, and students' conduct seems simply an extension of the physical environment that surrounds them.'' Similarly, Poplin and Weeres (1992) reported that, based on an intensive study of teachers, administrators, and students in four schools, ''the depressed physical environment of many schools . . . is believed to reflect society's lack of priority for these children and their education.''

OVERCROWDING

Overcrowded schools are a serious problem in many school systems, particularly in the inner cities, where space for new construction is at a premium and funding for such construction is limited. As a result, students find themselves trying to learn while jammed into spaces never intended as classrooms, such as libraries, gymnasiums, laboratories, lunchrooms, and even closets. Although research on the relationship between overcrowding and student learning has been limited, there is some evidence, particularly in high-poverty schools, that overcrowding can have an adverse impact on learning.

A study of overcrowded schools in New York City found that students in such schools scored significantly lower on both mathematics and reading exams than did similar students in underutilized schools. In addition, when asked, students and teachers in overcrowded schools agreed that overcrowding negatively affected both classroom activities and instructional techniques. (Rivera-Batiz and Marti, 1995)

Corcoran et al. (1988) found that overcrowding and heavy teacher workloads created stressful working conditions for teachers and led to higher teacher absenteeism.

Crowded classroom conditions not only make it difficult for students to concentrate on their lessons, but inevitably limit the amount of time teachers can spend on innovative teaching methods such as cooperative learning and group work or, indeed on teaching anything beyond the barest minimum of required material. In addition, because teachers must constantly struggle simply to maintain order in an overcrowded classroom, the likelihood increases that they will suffer from burnout earlier than might otherwise be the case.

CASE STUDIES

BROWARD COUNTY/FT. LAUDERDALE

The problem

Broward County is located in Southern Florida and is the fifth largest school district in the nation. Its schools suffer from severe overcrowding: 34,000 students without permanent desks; approximately 10,000 new students added to the school system each year; and in the past nine years, Broward has built 36 new schools and rebuilt 23 schools, and continues to have a difficult time meeting its demand.

Broward would have to build a new school every month to meet this demand adequately. Citing the approximately 2,000 portable classrooms in the county, the budget director for the county public schools described Broward as ''the portable capital of the world.'' One high school has 46 portable classrooms in use during this school year alone.

Needs and available resources

A recent needs analysis estimated Broward's capital construction needs at $2.4 billion, $200 million of which is needed for technology improvements alone. The last bond approved for school construction was for $317 million in 1987. Mobilizing local support for new tax or bond referenda has been difficult. In fact, in September, 1995, a tax referendum to increase the sales tax by one penny to raise $1 billion for school construction was defeated.

Potential impact of the Partnership to Rebuild America's Schools Act

Under the President's legislative proposal, approximately $16.4 million would be allocated to the county school district. Broward could use these funds to subsidize interest costs for a local bond to cover a substantial part of its school construction costs. This funding could support nearly $70 million in leveraged funds to assist in rebuilding a number of local schools.

These new funds would be used primarily to ease overcrowding in schools by funding new schools as well as renovations and additions to existing schools that would expand seating capacity. Broward also wants to reduce its reliance on portable classrooms due to the fact that—with a life expectancy of approximately 20 years—portables are not a good long-term investment compared to a traditional school structure. In addition, portables cannot be wired for technology the same way as a traditional classroom.

LOS ANGELES UNIFIED SCHOOL DISTRICT

I. The problem/current needs

The Los Angeles Unified School District is one of the largest institutions of any kind in the nation with an enrollment of 670,000 students. The prevalence of aging school facilities in Los Angeles poses a number of expensive problems for the district, which estimates its current deferred maintenance costs at more than $600 million. A majority of Los Angeles school buildings are more than 40 years old. As a result, most schools are not wired for technology, and most are not equipped with modern security systems, telecommunications systems, or air conditioning. Many facilities face similar repair needs—roof replacement is needed for 245 schools, repainting at more than 600 schools, boiler replacement at more than 50 schools, and playground re-pavement at almost 400 schools.

A rebounding economy and an influx of immigrants is driving steady growth in the Los Angeles schools. The number of students grew by 18,000 this year, and school officials predict enrollment will grow another 15,000 next year.

A State of California mandate to lower class size in the earliest grades consumed the limited number of vacant classrooms that existed. The need for more classrooms is illustrated by the fact that the district transports about 12,000 students a day to more distant schools because of overcrowding in their area school.

II. Needs versus available resources

The State of California school construction program uses two mechanisms to provide funds to local districts for new construction and modernization. In the more common approach, the state pays one-half of the ''allowable'' costs as defined by the state. Otherwise, the state pays the full bill, but in a very limited number of projects. Additionally, the state offers a small deferred maintenance program in which it provides matching funds of up to one-half of 1 percent of the district's general funds. In recent years, the Los Angeles district has been eligible for about $17 million through this program, but the state has not fully funded it in recent budgets.

District officials in Los Angeles report that a significant impediment to raising funds for construction is the requirement imposed by the state Constitution, which requires a two-third majority vote for the passage of school bonds financed by property tax increases. The last time the Los Angeles Unified School District passed a bond measure was 1971. (This vote came shortly after the Sylmar earthquake closed many schools and raised serious safety questions about others. The measure received 66.5 percent of the vote, but under state law, this bond required only a majority vote because it pertained to buildings deemed structurally unsafe.)

III. The impact of the President's initiative

A $2.4 billion school bond measure on the ballot in November 1996 for school construction and modernization received 65.5 percent of the vote, just missing the two-thirds majority needed for passage. In December 1996, the board of Education voted to put another $2.4 billion bond measure on the ballot in April 1997. The President's initiative could accelerate the development of the long overdue projects that would be financed by this bond.

THE STATE OF MAINE

1. The problem/current needs

Maine is struggling to cope with two major factors related to school facilities—booming economy driving explosive growth in the southern part of the state, and the continued use of one-room schools and other antiquated buildings—some dating 100 years—throughout the state.

The Bowdoin Community School offers an instructive example. The dozen portable classrooms now in use exceed the number of permanent classrooms inside the main structure. A proposed expansion of the school has been shelved since 1987 because of insufficient state funding to support the project.

II. Needs versus available resources

Support from the state of Maine for local school construction projects is restricted to debt service subsidies, and the level of available support is extremely limited. In fiscal 1998, school districts requested such subsidies for 83 projects. However, the $65.8 million authorized by the state is expected to be consumed by the four projects given the highest priority.

Schools districts in Maine are generally successful in getting voter approval for bond measures, but most districts in the state cannot cover the total cost of the bond. The lack of support from the state for debt service is cited as the leading reason why school districts fall short in raising financing, leading to the deferment of these sorely needed projects.

III. The potential impact of the Presidential Initiative

The executive director of the Maine Municipal Bond Bank noted that the President's school construction initiative could help Maine schools in two ways. The state could choose to use its allocation all at once to supplement its debt service subsidy program, or it could use that money to establish a revolving loan fund that would commit its revenues to debt service subsidies.

THE STATE OF MARYLAND

I. The problem/current needs

There are two primary problems facing Maryland school facilities: aging structures and rising enrollments.

A review of the list of Capital Improvement requests to the state for the coming year reveals the extent of aging school facilities. Requests are filled with descriptions of items in need of repair or replacement, such as roofs as much as 44 years old, HVAC systems that are 25 years old or more, boilers and chillers that date to the 1950s, and windows and doors in use since the 1960s.

Over the last decade, enrollment in Maryland schools has grown by approximately 150,000 students. State officials expect enrollment to continue climbing by another 30,000 or so annually over the next five to ten years. Overall, local districts requested approximately $310 million for 459 construction and renovation projects for FY 1998. While a district might request more than one project for a school, these figures suggest that districts are seeking assistance with construction and renovation projects that could affect a third of the state's 1,280 schools.

II. Needs versus available resources

The Maryland State Public School Construction Program is designed to help local districts with costs related to planning and funding of school construction and renovation projects.

Early in the program, the state covered 100 percent of eligible costs for approved projects. However, since the mid-1980s, the state use a sliding scale based on need to determine how much assistance a district receives.

Since the program's inception,the amount of funds requested each year by local districts has exceeded program allocations. For example, in FY 73, the program funded 72 percent of district requests—the highest proportion in the program's history. In FY 89, the state supported an all-time low of 24 percent of requests. In the current fiscal year, the state funded 51 percent of requests, totaling $274 million.

III. The potential impact of the Presidential initiative

State officials see three possibilities for the use of federal funds from the proposed School Construction Initiative.

First, the funds could subsidize additional state general obligation bonds. Therefore, the amount of assistance going to local districts with eligible costs would increase, and more projects would be funded. The federal funds could be targeted at poorer districts with larger projects that have been delayed due to fiscal constraints. It should be noted that an increase in the state funds for the Public School Construction Program might lead more districts to seek state assistance for additional projects. At this time, there are projects for which local districts do not submit requests because the district senses these projects will be deferred due to state fiscal constraints.

A second option would allow the state to use a portion of the funds to subsidize a combination of additional state bonds and country general obligation bonds. Finally, the state could use all the federal funds to subsidize additional county general obligation bonds.

NEW YORK CITY SCHOOL DISTRICT

I. The problem/current needs

New York is experiencing enrollment growth of 20,000 to 23,000 students a year. In addition, more than half of the over 1,000 school buildings are 50 years old or more. The district must upgrade these facilities and accommodate its burgeoning student population.

There are limits to the amount of money the district can raise through general obligation bonds, and this mechanism is not sufficient to meet the district's needs. There is a state constitutional limit on the amount of debt the district can issue (as a percentage of total assessed property value), and the district is running up against this limit.

The fiscal year 1997 capital expenditures budget for the Board of Education is just over $1 billion, out of a total city capital budget of just over $4 billion. A proposed 10-year capital plan has just been put forth for $12.6 billion, which includes an amount contingent on receipt of federal funds. One of the main emphasis of this plan is to address the district's overcrowding, using strategies such as new construction, other ways of handling seating capacity, and converting some schools to a year-round schedule, which could increase seating capacity by 25 to 33 percent.

II. The potential impact of the Presidential initiative

New York expects that it could leverage federal funds to address several needs. Among the most dire needs is for additional seats for children. The districts proposed 10-year plan was increased by about $700 million to address seating capacity needs. The district envisions six different avenues for the use of this money to increase seating capacity: Leasing new facilities, transportables, modular construction, rehabilitation of existing facilities to increase size, new construction, and converting schools to a year-round schedule (which necessitates putting in air-conditioning.)

PHILADELPHIA SCHOOL DISTRICT

The problem/current needs

The Philadelphia story has two strands. First, the district estimates that it will need about two-thirds of a billion dollars to bring its 257 existing building sites up to standard. This includes major renovations, repairs, improvements, and technology needs (schools need to be wired for computers, but 60 of Philadelphia's schools are over 70 years old.)

Second, to accommodate expected population growth, approximately one-quarter of a billion dollars in additional funding may be necessary. In the past five years, the public school population has grown 9.2 percent, and in the past seven years it has grown 12.6 percent. The district expects this growth to continue by 1.4 percent the next year and by 2.5 percent the following year. In one area, the district deals with overcrowding through a combination of classrooms under stairwells, walling off the ends of hallways to create classrooms, and portables.

II. Needs versus available resources.

The district knows that its capital needs in the next 5 to 10 years seriously exceed its current budgeted capital capacity. A Long Range Facilities Plan is being developed, and it is expected that the total need will ultimately be between $1–$1.4 billion.

III. The potential impact of the Presidential Initiative

The district says that federal funds could be extremely helpful by supporting preventive maintenance projects. With shrinking operation budgets, it is preventive maintenance that gets cut from the budget. These projects include minor roof and gutter repair, HVAC system cleaning, and yearly boiler maintenance. These activities get pushed aside for emergency projects and educational needs. Yet today's preventive maintenance

project is tomorrow's capital project. Roofs, boilers, and heating systems wear out years before their time because preventive maintenance funds are scarce. The failure of these systems also causes additional capital damage, such as water and pipe damage. Much of this could be avoided and long-term capital budget could be brought down with additional resources for preventive maintenance.

SANTA ANA UNIFIED SCHOOL DISTRICT

I. The problem/current needs

Santa Ana is an extremely densely populated area. In its 24 square miles, there are 350,000 resident, and 52,000 students. There is a school approximately every two blocks.

The primary problem in the district is school overcrowding, the result of a lack of construction funding during a period of raid enrollment growth. The district has grown from 31 thousand student in 1980 to 52,000 students in 1996.

The school district has converted 22 of 31 elementary schools and four of seven intermediate schools to multi-track, year-round schedules. Although other school districts in California and around the country use year-round schooling, it is unusual to have such a high percentage of schools on this tract. The district has 534 portable classrooms on existing sites, which is the equivalent of 24 free standing elementary schools. Santa Ana estimates that it now spends $1 million to lease portable classrooms.

A secondary, but also severe problem is maintaining ill-equipped and deteriorating facilities. The district prepared a state-mandated five-year plan to deferred maintenance needs, which is updated annually—the currently version projects a $15 million need.

II. Needs versus available resources

Santa Ana Unified has a need for three elementary schools plus a new high school. Enrollment growth has averaged over 1300 students annually since 1980. The need is accentuated by the fact that the State School Building Program is, ''broke'' and it is not clear when there will be another bond measure.

III. The potential impact of the President's initiative

President Clinton's initiative would potentially provide major benefits to the Santa Ana Community. The district needs adequate classrooms equipped with up-to-date education technology will be available to educate the rapidly growing student population. If the district received an estimated six million dollars from the federal government, it could leverage those funds to pay for additional elementary schools.

Ms. MOSELEY-BRAUN. I would also like to call to my colleagues' attention the reports and the work done by the General Accounting Office recently, both with regard to the condition of America's schools, State efforts to address the issue of crumbling schools, and the most recent GAO report on school finance generally. These reports speak to the ability or the efforts taken by State and local governments to address the disparities between wealthy and poor and middle-class school districts.

The fact of the matter is that this disparity, this gap in school funding, does not serve our national interest, does not serve the interest of taxpayers, and does not serve the interest of our children.

I believe we have an obligation to put aside the old debates of whether or not school funding should happen here or happen there, and we should look at developing a partnership in which everybody plays a part, in which all levels of government collaborate, in which communities, parents, property taxpayers, and income taxpayers cooperate to prepare our people for the 21st century and the challenges they face.

Mr. KENNEDY. Mr. President, I give my strong support to President Clinton's Partnership to Rebuild America's Schools Act of 1997, introduced today by Senator MOSELEY-BRAUN.

The Nation's schools are facing enormous problems of physical decay. Fourteen million children in one-third of the schools are learning in substandard school buildings. Half the schools have at least one unsatisfactory environmental condition.

Massachusetts is no exception. Forty-one percent of Massachusetts schools report that at least one building needs extensive repair or should be replaced; 75 percent report serious problems in buildings, such as plumbing or heating defects; 80 percent have at least one unsatisfactory environmental factor.

It is difficult to teach or learn in dilapidated classrooms. Student enrollments are at an alltime high and are continuing to rise. We cannot tolerate a situation in which facilities deteriorate while enrollments escalate.

GAO estimates that schools need $112 billion just to repair their facilities. Obviously, the Federal Government cannot meet all of these needs. The Partnership to Rebuild America's Schools Act encourages State, local, and private support by providing interest subsidies for school construction bonds. The Federal Government will pay up to 50 percent of interest on bonds used to finance school repair, renovation, modernization, and construction.

Half of the $5 billion in Federal funds earmarked for this program over the next four years will be allocated to States using the existing title I formula. States and localities will distribute these funds to communities with the greatest construction needs and the least ability to meet their needs with their own resources. Massachusetts would receive $48 million for grants to local communities.

The remaining Federal funds will be distributed by the U.S. Department of Education among the 100 school districts that enroll the greatest number of students living in poverty. Thirty percent of this funding will be allocated competitively to school districts that have particularly severe needs and obtain the most support for their construction projects from non-Federal sources. Under this part of the bill, Massachusetts would receive an estimated $25 million.

I hope that the Partnership To Rebuild America's Schools Act will receive the bipartisan support it deserves, so that it can be in place for the beginning of the next academic year. Investing in education is investing in a stronger America here at home and around the world. I look forward to working with my colleagues on both sides of the aisle to enact this important measure.

By Mr. CAMPBELL:

S. 457. A bill to amend section 490 of the Foreign Assistance Act of 1961 to provide alternative certification procedures for assistance for major drug producing countries and major drug transit countries; to the Committee on Foreign Relations.

THE MEXICO PROBATIONARY CERTIFICATION ACT

Mr. CAMPBELL. Mr. President, this month Congress has been considering the important issue of whether to uphold or overturn the President's certification of Mexico as fully cooperating with the United States to fight drug trafficking. I am concerned that without congressional action, the Senate must choose between two less than ideal options: First, to support the President's certification of Mexico and continue business as usual, thereby downplaying serious deficiencies in Mexico's efforts; or second, to decertify Mexico, with or without a waiver, which might destabilize an important country along our southern border.

Under current law, notice provided to the target country is often too late and not specific enough to fix the problems. Moreover, access to more timely and specific information would assist Congress in exercising its legislative and oversight responsibilities.

Therefore, today I propose a bill to provide an alternative approach. This legislation would provide the administration a new option to certify countries such as Mexico on probationary status for 7 months, which extends from March 1 through September 30, the end of the fiscal year. However, during this time period, the country on probationary certification is expected to comply with certain conditions stipulated by the President. If these conditions are not met at the end of this 7-month period, the United States will act firmly, such as by cutting off aid.

This alternative would put countries on notice that the United States has serious concerns about their lack of cooperation. But, it would provide a fair period of time during which those countries could address U.S. concerns.

This constructive notice period would be less disruptive to our bilateral relations. We saw last week some of the damage which could occur in our relationship with Mexico after the House voted to decertify Mexico within 90 days if certain criteria are not met. News reports quoted Mexico's President, Ernesto Zedillo, as stating: ''This is where we draw the line. Our sovereignty and dignity as a nation are not negotiable.''

My bill also provides better notice to Congress. Under this alternative, Congress would be informed about those specific concerns which the President identified regarding a country's lack of cooperation. Congress also would be

able to track that country's progress during the 7-month probationary period and, of course, maintain its prerogative to pass legislation as it deems necessary. I believe this would help avoid the contentious battle in which the Congress and the administration currently are engaged this month over Mexico.

It is no surprise that many Senators feel strongly about decertifying Mexico. Reports indicate that as much as 70 percent of the cocaine entering the United States comes through Mexico; up to 30 percent of the heroin used in the United States comes through Mexico; and 80 percent of imported marijuana comes through Mexico.

Recent developments in that country have exacerbated what is already a serious flow of illegal drugs into the United States. For example, according to a news report in the March 2 San Diego Union Tribune, Mexican authorities are now preventing our DEA agents and law enforcement officers from carrying their weapons into Mexico. In response, the DEA reportedly pulled its agents out of cross-training and intelligence-gathering projects in Mexico along the border. Agents and officers now fear they will become targets for gangs and drug traffickers, especially if Mexico's certification is revoked. This is intolerable.

Further motivating the push to decertify Mexico is the recent arrest of Mexico's drug czar, Gen. Jesus Gutierrez Rebollo, on allegations he was being paid to protect one of Mexico's top drug lords. The general is reported to have extensive drug ties, dating back to at least 1993, at the same time he was supposed to be fighting drug use and trade in his country.

Any information that the general may have possessed has been compromised. Nor is he alone in being corrupt. According to a Los Angeles Times report on March 3, court documents from two drug gang assassins indicate that approximately 90 percent of the law enforcement officers in Tijuana and the State of Baja California in Mexico are corrupt.

These developments raise serious concerns among DEA agents, who cannot adequately do their job if they do not receive the help of their Mexican counterparts. During his testimony before the House Subcommittee on National Security on February 27, 1997, Thomas Constantine, the Administrator of the DEA, called fighting drug trafficking without assistance from other countries nearly impossible.

In light of these disturbing developments, I wrote to the President last Friday expressing my concern with his certification of Mexico. I also urged the administration to take all necessary steps to ensure Mexico does its fair share in controlling the flow of illicit drugs across its border into the United States.

Decertifying Mexico will not make this process any easier. Yet, we cannot risk the implication that we condone Mexico's failed drug policy by fully certifying Mexico without certain conditions. Certification of Mexico in light of the compelling facts of that country's involvement in drug trafficking also makes a mockery of the certification provisions of the Foreign Assistance Act.

In light of these facts, I am concerned that the President has certified Mexico as fully cooperating with the United States. However, I am also concerned that decertifying Mexico could destabilize a country important to us and cause a potential crisis on our southern border. Unfortunately, that is the choice the administration has under existing law.

Therefore, the bill I introduce today would amend the existing law to avoid this type of problem in the future. The current certification process is set forth in section 490 of the Foreign Assistance Act of 1961. It requires the President to submit to Congress by March 1 of each year a list of major illicit drug producing and transiting countries which he certifies are fully cooperating with the United States. This bill offers a good middleground—I urge support.

Under existing law, the President has three options: One, certify a country which has cooperated fully with U.S. anti-drug efforts or has taken adequate steps on its own to comply with the 1988 U.N. anti- drug trafficking convention. Two, decertify a country for not fully cooperating. Or three, decertify a country but provide a waiver because it is in the national interests of the United States to continue to provide aid.

Under this law, when a country is decertified, at least 50 percent of U.S. bilateral foreign aid is suspended in the current fiscal year. In fact, that county may lose more than 50 percent of its current funding if the State Department has not yet released the aid. Unless the country is recertified, all U.S. aid is suspended in subsequent fiscal years. And, the United States is required to vote against loans in the multilateral development banks, such as the World Bank and the Inter-American Development Bank.

Congress has 30 days from receipt of the President's certification to enact a joint resolution disapproving the President's action. If Congress passes such a resolution, the President can veto it and require a two-thirds majority vote in Congress to override the veto.

Congress also has its prerogative to pass a resolution with other timeframes, which would be subject to a Presidential veto. We saw this last week when the House passed a resolution to decertify Mexico within 90 days if certain criteria are not met.

On February 28, 1997, the President submitted his annual list to Congress. This report indicated that 23 countries, including Mexico, are certified as fully cooperating; three countries were determined not to be fully cooperating, but were deemed in the national interest—Belize, Lebanon, and Pakistan—and six countries were decertified (Afghanistan, Burma, Colombia, Iran, Nigeria, and Syria.

The impact of this process on Mexico could be dramatic. If Congress were to pass a resolution of disapproval within the 30-day review period and the President does not exercise his waiver authority, the impact would include: Suspension of at least 50 percent of United States assistance for the current fiscal year; total suspension of aid in the next fiscal year, unless Mexico were recertified; and the United State would vote against loans to Mexico in the multilateral development banks. Mexico receives $17 million in bilateral aid from the United States and, according to the Export-Import Bank, 56 applications from Mexico could be affected which total $3.24 billion.

The alternative that I am proposing today provides a middle ground because it revisits the certification issue more often during the course of the year. The President also is given more flexibility in labelling countries more accurately.

I'm also concerned that under existing law, we are giving a free ride to countries which are decertified but then are granted a waiver and continue to receive aid because it is deemed in the national interest of the United States. These waivers, in essence, allow the provision of aid year after year to countries not fully cooperating with the United States. What incentive do these countries have to improve their cooperation?

My legislation builds on the existing carrot and stick approach in the certification process. This type of approach has been successful with other problems in the past, and I think it would go a long way to avoid similar controversies in the future like the one we have seen surrounding the Mexico certification this month.

Under my bill, the carrot is certification, although for a finite period of time of 7 months. During this probationary period, all U.S. aid continues to flow and the United States remains supportive in international development banks. The President also stipulates which specific conditions must be met by that country to improve its cooperation with the United States and to continue receiving U.S. aid. Not only is sufficient notice provided to the country, but to the Congress as well.

The stick is a penalty similar to that under existing law. If after 7 months the country does not comply with the stipulations made by the President to improve its cooperation with the United States, 100 percent of U.S. bilateral aid is cut off. The United States also would vote against aid in the multilateral development banks if the country does not comply with U.S. stipulations, as provided for under current law. These penalties would remain in effect until the President notifies Congress that the country has complied with the stipulations made in the President's original probationary certification.

In my opinion, this alternative approach would force fuller compliance by countries and, in future cases similar to Mexico, help avoid a potential crisis in those countries.

We need to send a very strong message to our neighbors in Mexico and similarly situated countries when we do not believe that they are fully cooperating with United States efforts to combat drug trafficking. But, to risk a crisis along our own border is asking for greater trouble.

I believe that a compromise solution, as outlined in my proposal, is the most reasonable way to address similar circumstances in the future, and I urge my colleagues to support this 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. 457

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

SECTION 1. ALTERNATIVE CERTIFICATION PROCEDURES FOR ASSISTANCE FOR MAJOR DRUG PRODUCING AND DRUG TRANSIT COUNTRIES.

(a) IN GENERAL.—Section 490 of the Foreign Assistance Act of 1990 (22 U.S.C. 2291j) is amended by adding at the end the following:

''(i) ALTERNATIVE CERTIFICATION PROCEDURES.—

''(1) IN GENERAL.—In lieu of submitting a certification with respect to a country under subsection (b), the President may submit the certification described in paragraph (2). The President shall submit the certification under such paragraph at the time of the submission of the report required by section 489(a).

''(2) CERTIFICATION.—A certification with respect to a country under this paragraph is a certification specifying—

''(A) that the withholding of assistance from the country under subsection (a)(1) and the opposition to assistance to the country under subsection (a)(2) in the fiscal year concerned is not in the national interests of the United States; and

''(B) the conditions which must be met in order to terminate the applicability of paragraph (4) to the country.

''(3) EFFECT OF CERTIFICATION IN FISCAL YEAR OF CERTIFICATION.—If the President submits a certification with respect to a country under paragraph (1) for a fiscal year—

''(A) the assistance otherwise withheld from the country pursuant to subsection (a)(1) may be obligated and expended in that fiscal year; and

''(B) the requirement of subsection (a)(2) to vote against multilateral development bank assistance to the country shall not apply to the country in that fiscal year.

''(4) EFFECT OF CERTIFICATION IN LATER FISCAL YEARS.—

''(A) IN GENERAL.—Subparagraph (B) shall apply to a country covered by a certification submitted under this subsection during the period beginning on October 1 of the year in which the President submits the certification and ending on the date on which the President notifies Congress that the conditions specified with respect to the country under paragraph (2)(B) have been met.

''(B) PROHIBITION ON ASSISTANCE.—

''(i) BILATERAL ASSISTANCE.—During the applicability of this subparagraph to a country, no United States assistance allocated for the country in the report required by section 653 may be obligated or expended for the country.

''(ii) MULTILATERAL ASSISTANCE.—During the applicability of this subparagraph to a country, the Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vote against any loan or other utilization of the funds of such institution to or by the country.

''(5) DEFINITION.—For purposes of this subsection, the term 'multilateral development bank' shall have the meaning given the term in subsection (a)(2).''.

(b) CONFORMING AMENDMENTS.—Subsection (a) of such section is amended by striking ''subsection (b)'' each place it appears and inserting ''subsections (b) and (i)''.

By Mr. FAIRCLOTH (for himself, Mr. KYL, Mr. WARNER, Mr. LUGAR, Mr. SHELBY, Mr. INHOFE, Mr. BENNETT, Mr. CRAIG, Mr. ENZI and Mr. HAGEL):

S. 458. A bill to provide for State housing occupancy standards, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE HOUSING PROTECTION ACT

Mr. FAIRCLOTH. Mr. President, I am pleased to introduce today a bill to protect housing. This bill will ensure that all residents have a peaceful, well-maintained, and managed community with the services they deserve.

The Housing Protection Act prohibits the Department of Housing and Urban Development [HUD] from establishing a national occupancy standard and transfers the authority to set those standards to the States. In the absence of a State standard, a two-person-per-bedroom standard would be presumed reasonable.

In 1995, Senator KYL and I introduced this same piece of legislation, after HUD's General Counsel Nelson Diaz issued a memorandum which, in effect, attempted to supplant the reasonable two-person-per-bedroom standard with conditions which could have forced housing owners to accept six, seven, even eight people in a two-bedroom apartment. The House of Representatives passed it as part of its public housing reform bill, but the bill failed to pass out of conference last year.

Too often apartments are crowded with excessive numbers of people. When this happens, apartment complexes experience excessive noise, lower levels of safety and most often deterioration of the units. Building codes are in place for a reason. They are designed to determine the maximum amount of people who may safely exit a building during a fire or other emergency. Occupancy standards, on-the-other-hand, determine how many residents can be accommodated and for whom they can properly provide services on the premises.

The purpose of occupancy standards is to provide decent, safe, comfortable housing and a peaceful living environment for all residents. They also help maintain properties in excellent condition. While housing providers set their own occupancy standards, such private standards are in effect limited by state-set laws or policies which establish the minimum occupancy levels at which housing providers achieve safe harbor from charges of familial discrimination.

This bill is widely supported by housing industry associations such as the National Association of Homebuilders and the National Apartment Association, among others. Many of our colleagues have joined us in support of this bill, and I urge others to consider cosponsoring it.

Mr. KYL. Mr. President, I am pleased to introduce the State Housing Protection Act. I thank Senator FAIRCLOTH for his leadership on this issue and joining in sponsoring this bill. This bill prohibits the Department of Housing and Urban Development [HUD] from enforcing a complaint of discrimination on the basis of a housing provider's occupancy standard, and thereby, transfers from HUD to the States the authority to set occupancy standards.

Mr. President, in July 1995, HUD General Counsel Diaz issued a memorandum which, in effect, tried to supplant the traditional two-per-bedroom occupancy standard, and could have forced housing owners to accept six, seven, eight, or even nine people in a two-bedroom apartment. HUD should not be establishing national occupancy standards.

In 1995, Senator FAIRCLOTH and I blocked HUD from imposing national occupancy standards until it completed an official rule. Soon thereafter, along with Representative MCCOLLUM, we introduced our bill to permanently transfer authority back to the States. The House passed it as part of its public housing reform bill, but it died in the conference committee late last year.

By pursuing a policy that encourages overcrowding, thereby depreciating housing stock that is scarce to begin with, HUD is poorly serving lower income families and defeating its own charter. Our bill will help correct the problem. It is supported by the Council for Affordable and Rural Housing, the Council of Larger Public Housing Authorities, the Multi Housing Institute, the National Apartment Association, the National Assisted Housing Management Association, the National Association of Home Builders, the National Association of Housing and Redevelopment Officials, the National Leased Housing Association, the National Multi Housing Council, and the Public Housing Authorities Directors Association.

Several States have an occupancy standard; the one in my own home State of Arizona has worked well. The intrusion of a Federal bureaucracy often does more harm than good. That is why Senator FAIRCLOTH and I have reintroduced this bill. I urge my colleagues to join us and cosponsor it.

By Mr. CAMPBELL (for himself, Mr. MCCAIN, Mr. DOMENICI, Mr. MURKOWSKI, and Mr. INOUYE):

S. 459. A bill to amend the Native American Programs Act of 1974 to extend certain authorizations, and for other purposes; to the Committee on Indian Affairs.

THE NATIVE AMERICAN PROGRAMS ACT OF 1974 REAUTHORIZATION ACT OF 1997

Mr. CAMPBELL. Mr. President, I am pleased to introduce a bill to extend the authorization for certain programs under the Native American Programs Act of 1974. This bill is critical to continue the availability of a modest amount of grant funds used by native communities nationwide to foster economic growth, develop tools for good governance methods, and promote social welfare.

The authorization for most of these programs has expired and though the administration has requested funding for fiscal year 1998 at fiscal year 1997 levels, it has not introduced legislation to reauthorize the act. The legislation I am introducing today would do just that.

These programs are administered through the Administration for Native Americans [ANA] located within the Department of Health and Human Services. By awarding annual grants on a competitive basis, the Native American Programs Act promotes self-sufficiency and self-determination by encouraging tribes, villages, and other native communities to develop and plan local strategies in economic and social development. The program is designed to build greater capacity at the tribal level for better governance, more vibrant and diversified economies, and social development.

The ANA Program has proven successful for native communities since its inception and has generated widespread support by America's native communities. The centerpiece of the program are grants made under the Social and Economic Development Strategies (SEDS) Program; grants to tribes enhance tribal environmental regulatory capabilities; and grants made to preserve and rehabilitate native languages.

This legislation will simply extend for 4 years until fiscal year 2000 the authorization for these modestly funded yet very successful programs to strengthen and rebuild tribal communities around the United States.

I urge my colleagues to join with me in enacting this reauthorization so that these proven tools for development can again be made available to native peoples around the Nation. I ask unanimous consent that a section-by-section summary and the bill language be printed in the RECORD.

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

BILL LANGUAGE

SECTION 1. AUTHORIZATION OF CERTAIN APPROPRIATIONS UNDER THE NATIVE AMERICAN PROGRAMS ACT OF 1974.

Section 816.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) in subsection (a), by striking ''for fiscal years 1992, 1993, 1994, and 1995.'' and inserting ''for each of fiscal years 1997, 1998, 1999, and 2000'';

(2) in subsection (c), by striking ''for each of the fiscal years 1992, 1993, 1994, 1995, and 1996,'' and inserting ''for each of fiscal years 1997, 1998, 1999, and 2000,''; and

(3) in subsection (e), by striking ''$2,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, 1996, and 1997.'' and inserting ''such sums as may be necessary for fiscal years 1997, 1998, 1999, and 2000.''

SECTION-BY-SECTION ANALYSIS

The purpose of this bill is to amend the 1974 Native American Programs Act, P.L. 93–644 (42 U.S.C. 2991 et seq.) to extend to fiscal year 2000 the authorization of appropriations for three grant programs administered by the Administration for Native Americans (ANA) in the Department of Health and Human Services (HHS).

Section 1. Authorization of Certain Appropriations Under the Native American Programs Act of 1974.

Section 816.—

(a) this subsection provides for a four year extension to fiscal year 2000 of the present authority to appropriate such sums as may be necessary to carry out the general grant provisions of the Native American Programs Act of 1974 (42 U.S.C. 2992d). The bill would continue the current ''such sums as may be necessary'' language contained in current law.

(c) this subsection provides for a four year extension to fiscal year 2000 of the present authority to appropriate funds for the purpose of carrying out the provisions related to grants for tribal regulation of environmental quality (42 U.S.C. Sec. 2991b(d). The bill would continue the current authorized level of $8 million for such grants.

(e) this subsection provides for a four year extension to fiscal year 2000 of the present authority to appropriate such sums as may be necessary for the purpose of carrying out the provisions related to grants for the preservation of Native languages (42 U.S.C. Sec. 2991b-3). The bill would strike the current authorized appropriaitons level of $2 million for Native language grants and instead would substitute ''such sums as may be necessary''.

Mr. DOMENICI. Mr. President, I am pleased to join my colleagues Senators CAMPBELL, MCCAIN, and MURKOWSKI in sponsoring this act to extend the authorization of several important programs for American Indians. The U.S. Department of Health and Human Services [HHS] administers these programs through the Administration for Native Americans [ANA]. Over the past 5 years, funding has ranged from $34.5 million to $38.6 million. In fiscal year 1997, the funding was $34.9 million.

Our bill will reauthorize important programs to promote economic development, strengthen tribal governments, and provide for the better coordination of social programs available to tribes. The ANA funding policy is to assist Indian Tribes and Native American organizations to plan and implement their own long-term strategies for social and economic development. The aim is to increase local productivity and reduce dependence on government social services.

Competitive grants are the means for distributing these vital funds. In New Mexico, the Pueblos of Laguna ($382,000), Picuris ($167,000), Pojoaque ($120,000), Sandia ($133,890), Tesuque ($125,000), San Juan ($232,000), Santa Ana ($112,000), and Santo Domingo ($110,464) all received grants from fiscal year 1996 funds. New Mexico Tribes and Pueblos have participated in ANA grant activity for about three decades.

The Social and Economic Development Strategies [SEDS] program fosters the development of stable, diversified local economies. SEDS grant funds are used to develop the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy. Social infrastructure includes the maintenance of a tribe's cultural integrity. Pojoaque Pueblo's Cultural Center is the beneficiary of an ANA grant.

Other ANA grants are used to establish or expand business activity or to stabilize and diversify a tribe's economic base. Micro enterprises and other private sector development are encouraged.

Mr. President, I thank Chairman CAMPBELL of the Senate Committee on Indian Affairs for his good work to extend the authorization for these valuable resources to improve tribal opportunities for self-sufficiency. I urge my colleagues to support the reauthorization of these Administration for Native Americans Programs.

Mr. INOUYE. Mr. President, I rise today to cosponsor a measure to reauthorize the Native American Programs Act of 1974. The purpose of this bill is to amend the Native American Programs Act to extend the authorization of appropriations for programs administered by the administration for Native Americans within the Department of Health and Human Services to fiscal year 2000.

In 1974, the Native American Programs Act was enacted by the Congress to assist tribes and other Native American entities with developing social, economic, and governance strategies in order to become viable and economically self-sufficient communities.

In the decades since its enactment, hundreds of tribes, reservation communities, and native organizations have benefited from the programs funded under this act. In fiscal year 1994 alone, the administration for Native Americans provided 215 grants for governance, social, and economic development projects, several dozen grants to assist with tribal recognition efforts, 26 grants for projects to assist tribes in their capacity to meet environmental requirements, 18 grants to support projects assisting the survival and preservation of Native American languages, and funds to support the Native Hawaiian revolving loan fund.

These projects have served to improve the quality of living for thousands of Native American families and communities.

Over 2 years ago, on March 7, 1995, Senators MCCAIN, CAMPBELL and I introduced S. 510, a bill which reauthorized programs under the Native American Programs Act. On May 11, 1996 this body passed S. 510, as amended in committee, by unanimous consent, but the bill was subsequently not acted upon by the House prior to the adjournment of the 104th Congress.

The bill being introduced today is substantially similar to S. 510, as introduced in the last Congress. I am pleased that once again, the chairman, as his predecessor did, is willing to consider the inclusion of provisions that would reauthorize for a period of 1 year, the Native Hawaiian revolving loan fund.

Mr. President, the programs authorized in this measure are critical to fostering Native American social and economic self-sufficiency—a goal shared by this Congress as we move toward greater fiscal responsibility.

I urge my colleagues to act favorably and expeditiously on this measure.

By Mr. BOND (for himself, Ms. SNOWE, Mr. NICKLES, Mr. BURNS, Mr. WARNER, Mr. FAIRCLOTH, Mr. MURKOWSKI, Mr. INHOFE, Mr. ENZI, Mr. HUTCHINSON, Mr. MACK, Ms. MIKULSKI and Mr. GRAMS):

S. 460. A bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes; to the Committee on Finance.

THE HOME-BASED BUSINESS FAIRNESS ACT OF 1997

Mr. BOND. Mr. President, home-based businesses are a significant and often overlooked part of this country's economy. Some people may be surprised to learn that over 9 million men and women in this country now operate home-based businesses, and over 14 million individuals earn income through home-based businesses. Even more impressive is the fact that a majority of these enterprises are owned by women, and the Small Business Administration estimates that women in this country are starting over 300,000 new home-based businesses each year.

There are a number of reasons for the explosive growth of home-based businesses. Recent innovations in computer and communication technology have made the virtual office a reality and allow many Americans to compete in marketplaces that a few years ago required huge investments in equipment and personnel. In addition, many men and women in this country turn to home-based business in an effort to spend more time with their children. By working at home, these families can bring in two incomes, while avoiding the added time and expense of day-care and commuting. Corporate downsizing, too, contributes to the growth in this sector as many skilled individuals convert their knowledge and experience from corporate life into successful enterprises operated from their homes.

The rewards of owning a home-based business are also numerous. The added independence and self-reliance of having your own business provides not only economic rewards but also personal satisfaction. You are the boss: you set your own hours, develop your own business plans, and choose your customers and clients. In many ways, home-based businesses provide the greatest avenue for the entrepreneurial spirit, which has long been the driving force behind the success of this country.

But with these rewards comes a number of obstacles, not the least of which are regulations and burdens imposed by the Federal Government. In fact, the tax laws, and in particular the IRS, are frequently cited as the most significant problems for home-based businesses today. Changes in tax policy must be considered by this Congress to ensure that our laws do not stall the growth and development of this successful sector of our economy.

Mr. President, in answer to this call for help, I am introducing today the Home-Based Business Fairness Act of 1997. This legislation is the product of extensive input from actual home-based business owners and the efforts of my colleagues Senators OLYMPIA SNOWE and DON NICKLES. The bill is designed to address three tax issues that currently pose significant problems for home-based businesses.

DEDUCTIBILITY OF HEALTH-INSURANCE COSTS FOR THE SELF-EMPLOYED

First, the bill addresses the deductibility of health-insurance costs for the self-employed. During the 104th Congress, we made significant progress in this area. First, we made the deduction permanent after years of uncertainty. Then, last summer, we passed legislation that will increase the deduction for these health-care costs to 80 percent incrementally by 2006. While I fully supported that increase, the self-employed cannot wait 10 years for partial deductibility when their large corporate competitors can fully deduct such costs today.

With the self-employed able to deduct only 40 percent of their health-insurance costs today, it comes as no surprise that nearly a quarter of the self-employed, many of whom operate home-based businesses, do not have health insurance. In fact, 4 million households in this country headed by a self-employed individual do not have health insurance.

In order to make it easier for home-based business owners and their families to have health insurance, we must level this playing field. My bill will increase the deductibility of health insurance for the self-employed to 100 percent beginning this year. A full deduction will make health insurance more affordable to home-based business owners and help them and their families get the health insurance coverage that they need and deserve.

HOME-OFFICE DEDUCTION

Second, the Home-Based Business Fairness Act will restore the home-office deduction and further level the playing field for home-based businesses. After the Supreme Court's 1993 Soliman decision, the only home-based businesses that can deduct the costs associated with their home office are those that see their clients in the home and that generate their income within the home office. That narrow interpretation of the law denies the home-office deduction to service providers like construction contractors, landscaping professionals, and sales representatives, who must by necessity perform their services outside of the home.

It is patently unfair to prevent these individuals from deducting their utility costs, property taxes, and other expenses related to the home office, when they could do so if they rented an office separate from the home. I thank my colleague from Utah, Senator HATCH, for his willingness to allow us to work together on this issue. My bill incorporates the legislation that Senator HATCH introduced earlier this month and will permit a home office to include one where the individual performs his essential administrative and management activities such a billing and record keeping. In order to qualify for the deduction, the bill requires that the business owner perform these activities on a regular, on-going, and nonincidental basis and have no other office in which to perform them.

The restoration of the home-office deduction for home-based businesses not only puts them on an equal footing with their larger competitors, but also frees important capital that can be used to expand the business. For too long home-based businesses have lived with the fear of an IRS audit fueled by the Soliman decision. It is time to eliminate this obstacle to the continued success of these important entrepreneurs.

CLARIFICATION OF INDEPENDENT-CONTRACTOR STATUS

The final element of the Home-Based Business Fairness Act is relief for entrepreneurs seeking to be treated as independent contractors and for businesses needing to hire independent contractors. As the chairman of the Small Business Committee, I have heard from countless small business owners who are caught in the environment of fear and confusion that now surrounds the classification of workers. This situation is stifling the entrepreneurial spirit of many small business owners who find that they do not have the flexibility to conduct their businesses in a manner that makes the best economic

sense and that serves their personal and family goals.

Mr. President, the root of this problem is found in the IRS' test for determining whether a worker is an independent contractor or an employee. Over the past three decades, the IRS has relied on a 20-factor test based on the common law to make this determination. On first blush, a 20-factor test sounds like a reasonable approach: if a taxpayer demonstrates a majority of the factors, he or she is an independent contractor. Not surprisingly, the IRS' test is not that simple. It is a complex set of extremely subjective criteria with no clear weight assigned to any of the factors. As a result, a small business taxpayer is not able to predict which of the 20 factors will be most important to a particular IRS agent, and finding a certain number of these factors in any given case does not guarantee the outcome.

To make matters worse, the IRS' determination inevitably occurs 2 or 3 years after the parties have determined in good faith that they have an independent-contractor relationship. And the consequences can be devastating. The business recipient of the services is forced to reclassify the independent contractor as an employee and must pay the payroll taxes the IRS says should have been collected in the prior years. Interest and penalties are also added on. The result for many small businesses is a tax bill that bankrupts the company. And that's not the end of the story. The IRS then goes after the service provider, who is now classified as an employee, and disallows a portion of his business expenses—again resulting in additional taxes, interest, and penalties.

Mr. President, all of us in this body recognize that the IRS is charged with the duty of collecting Federal revenues and enforcing the tax laws. The problem in this case is that the IRS is using a procedure that is patently unfair and is doing so on an increasingly frequent basis. Between 1988 and 1994, the IRS' use of the 20-factor test resulted in some 11,000 audits, 483,000 worker reclassifications, and $751 million in back taxes and penalties. These facts make me wonder whether the IRS is using this test as a de facto source of enhanced revenue collection when the classification decision does not alter the aggregate tax liability to the Federal Government at all.

For its part, the IRS has just released its revised worker classification training manual. In the Commissioner's accompanying memo, she describes the manual as an ''attempt to identify, simplify, and clarify the relevant facts that should be evaluated in order to accurately determine worker classification. . . .'' There can be no more compelling reason for immediate action on this issue. The revised manual is over 150 pages—even longer than the original draft. If it takes this many pages to teach revenue agents how to simplify and clarify this small business tax issue, I think we can be fairly sure how simple and clear it is going to seem to the taxpayer who tries to figure it out on his own.

The Home-Based Business Fairness Act removes the need for so many pages of instruction on the 20-factor test by establishing a clear safe harbor based on objective criteria. Under these criteria, if there is a written agreement between the parties, and if an individual demonstrates economic independence and independence with respect to the workplace, he will be treated as an independent contractor rather than an employee. And the service recipient will not be treated as an employer. In addition, individuals who perform services through their own corporations will also qualify for the safe harbor as long as there is a written agreement and the individuals provide for their own benefits.

The safe harbor is simple, straightforward, and final. To take advantage of it, payments above $600 per year to an individual service provider must be reported to the IRS, just as is required under current law. This will help ensure that taxes properly due to the Treasury will continue to be collected.

Mr. President, the IRS contends that there are millions of independent contractors who should be classified as employees, which costs the Federal Government billions of dollars a year. This assertion is plainly incorrect. Classification of a worker has no cost to the Government. What costs the Government are taxpayers who do not pay their taxes. My bill has two requirements that I believe will improve compliance among independent contractors using the safe harbor. First, there must be a written agreement between the parties—this will help the independent contractor know from the beginning that he is responsible for his own tax payments. Second, the safe harbor will not apply if the service recipient does not comply with the reporting requirements and issue 1099's to individuals who perform services.

My bill also provides relief for businesses and independent contractors when the IRS determines that a worker was misclassified. Under the bill, if the business and the independent contractor have a written agreement, if the applicable reporting requirements were met, and if there was a reasonable basis for the parties to believe that the worker is an independent contractor, then any IRS reclassification upheld in court will only apply prospectively. This provision gives important peace of mind to small businesses that act in good faith by removing the unpredictable threat of retroactive reclassification and substantial interest and penalties.

A final provision of this legislation, Mr. President, is the repeal of section 1706 of the 1986 Tax Reform Act. This provision effectively barred an entire group of independent contractors from the protection available in section 530 of the Revenue Act of 1978. When section 1706 was enacted, its proponents argued that technical service workers—such as engineers, designers, and computer programmers—were less compliant in paying their taxes. Later examination of this issue by the Treasury Department found that technical service workers are in fact more likely to pay their taxes than most other types of independent contractors. This revelation underscores the need to repeal section 1706 and level the playing field for individuals in these professions. In the 104th Congress, proposals to repeal section 1706 enjoyed wide bipartisan support, and it is my hope that the 105th Congress will finally act on this proposal to restore equality for these professionals.

Mr. President, the importance of adding clarity to the independent-contractor situation is underscored by the fact that the 2,000 delegates to the 1995 White House Conference on Small Business voted to designate it as their top priority. At that conference, IRS Commissioner Richardson noted that either classification—independent contractor or employee—can be a valid and appropriate business choice as long as the individual pays his taxes. This conclusion was later affirmed in the IRS' new worker classification training manual. It is time that the law reflect this conclusion and allow small businesses to hire employees or independent contractors as their business needs demand, without the fear and uncertainty that now prevails.

The Home-Based Business Fairness Act is a common-sense measure that will provide tax fairness for the increasing number of individuals who operate their businesses from home and contribute so significantly to the strength of our economy. These business owners have waited far too long. I urge the members of the Finance Committee to work with Senator NICKLES and to report out a bill that provides these three much needed changes in the tax law so that we do not keep them waiting any longer.

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

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

S. 460

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 ''Home-Based Business Fairness Act of 1997''.

SEC. 2. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS INCREASED.

(a) IN GENERAL.—Section 162(l)(1) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during

the taxable year for insurance which constitutes medical care for the taxpayer, the taxpayer's spouse, and dependents.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 3. CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS.

(a) IN GENERAL.—Subsection (f) of section 280A of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

''(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

''(B) the office is necessary because the taxpayer has no other location for the performance of the essential administrative or management activities of the business.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 4. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

''SEC. 3511. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—For purposes of this title, if the requirements of subsections (b), (c), and (d), or the requirements of subsections (d) and (e), are met with respect to any service performed by any individual, then with respect to such service—

''(A) the service provider shall not be treated as an employee,

''(B) the service recipient shall not be treated as an employer,

''(C) the payor shall not be treated as an employer, and

''(D) compensation paid or received for such service shall not be treated as paid or received with respect to employment.

''(2) AVAILABILITY OF SAFE HARBOR NOT TO LIMIT APPLICATION OF OTHER LAWS.—Nothing in this section shall be construed—

''(A) as limiting the ability of a service provider, service recipient, or payor to apply other applicable provisions of this title, section 530 of the Revenue Act of 1978, or the common law in determining whether an individual is not an employee, or

''(B) as a prerequisite for the application of any provision of law described in subparagraph (A).

''(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO THE SERVICE RECIPIENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

''(1) has the ability to realize a profit or loss,

''(2) incurs unreimbursed expenses which are ordinary and necessary to the service provider's industry and which represent an amount at least equal to 2 percent of the service provider's adjusted gross income attributable to services performed pursuant to 1 or more contracts described in subsection (d), and

''(3) agrees to perform services for a particular amount of time or to complete a specific result or task.

''(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) has a principal place of business,

''(2) does not primarily provide the service at a single service recipient's facilities,

''(3) pays a fair market rent for use of the service recipient's facilities, or

''(4) operates primarily with equipment not supplied by the service recipient.

''(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the service provider are performed pursuant to a written contract between such service provider and the service recipient, or the payor, and such contract provides that the service provider will not be treated as an employee with respect to such services for Federal tax purposes.

''(e) BUSINESS STRUCTURE AND BENEFITS REQUIREMENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) conducts business as a properly constituted corporation or limited liability company under applicable State laws, and

''(2) does not receive from the service recipient or payor benefits that are provided to employees of the service recipient.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) FAILURE TO MEET REPORTING REQUIREMENTS.—If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of section 6041(a) or 6041A(a) with respect to a service provider, then, unless the failure is due to reasonable cause and not willful neglect, the safe harbor provided by this section for determining whether individuals are not employees shall not apply to such service recipient or payor with respect to that service provider.

''(2) BURDEN OF PROOF.—For purposes of subsection (a), if—

''(A) a service provider, service recipient, or payor establishes a prima facie case that it was reasonable not to treat a service provider as an employee for purposes of this section, and

''(B) the service provider, service recipient, or payor has fully cooperated with reasonable requests from the Secretary or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

''(3) RELATED ENTITIES.—If the service provider is performing services through an entity owned in whole or in part by such service provider, the references to 'service provider' in subsections (b) through (e) may include such entity, provided that the written contract referred to in subsection (d) is with such entity.

''(g) DETERMINATIONS BY THE SECRETARY.—For purposes of this title—

''(1) IN GENERAL.—

''(A) DETERMINATIONS WITH RESPECT TO A SERVICE RECIPIENT OR A PAYOR.—A determination by the Secretary that a service recipient or a payor should have treated a service provider as an employee shall be effective no earlier than the notice date if—

''(i) the service recipient or the payor entered into a written contract satisfying the requirements of subsection (d),

''(ii) the service recipient or the payor satisfied the applicable reporting requirements of section 6041(a) or 6041A(a) for all taxable years covered by the agreement described in clause (i), and

''(iii) the service recipient or the payor demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(B) DETERMINATIONS WITH RESPECT TO A SERVICE PROVIDER.—A determination by the Secretary that a service provider should have been treated as an employee shall be effective no earlier than the notice date if—

''(i) the service provider entered into a contract satisfying the requirements of subsection (d),

''(ii) the service provider satisfied the applicable reporting requirements of sections 6012(a) and 6017 for all taxable years covered by the agreement described in clause (i), and

''(iii) the service provider demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(C) REASONABLE CAUSE EXCEPTION.—The requirements of subparagraph (A)(ii) or (B)(ii) shall be treated as being met if the failure to satisfy the applicable reporting requirements is due to reasonable cause and not willful neglect.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed as limiting any provision of law that provides an opportunity for administrative or judicial review of a determination by the Secretary.

''(3) NOTICE DATE.—For purposes of this subsection, the notice date is the 30th day after the earlier of—

''(A) the date on which the first letter of proposed deficiency that allows the service provider, the service recipient, or the payor an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

''(B) the date on which the deficiency notice under section 6212 is sent.

''(h) DEFINITIONS.—For the purposes of this section—

''(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs a service for another person.

''(2) SERVICE RECIPIENT.—Except as provided in paragraph (4), the term 'service recipient' means the person for whom the service provider performs such service.

''(3) PAYOR.—Except as provided in paragraph (4), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipient does not pay the service provider.

''(4) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity in which the service provider owns in excess of 5 percent of—

''(A) in the case of a corporation, the total combined voting power of stock in the corporation, or

''(B) in the case of an entity other than a corporation, the profits or beneficial interests in the entity.

''(5) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to the operation of the service provider's trade or business.

''(6) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

''(A) the office is the location where the service provider's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the service provider, and

''(B) the office is necessary because the service provider has no other location for the performance of the essential administrative or management activities of the business.

''(7) FAIR MARKET RENT.—The term 'fair market rent' means a periodic, fixed minimum rental fee which is based on the fair rental value of the facilities and is established pursuant to a written agreement with

terms similar to those offered to unrelated persons for facilities of similar type and quality.''

(b) CLARIFICATION OF RULES REGARDING EVIDENCE OF CONTROL.—For purposes of determining whether an individual is an employee under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), compliance with statutory or regulatory standards shall not be treated as evidence of control.

(c) REPEAL OF SECTION 530(d) OF THE REVENUE ACT OF 1978.—Section 530(d) of the Revenue Act of 1978 (as added by section 1706 of the Tax Reform Act of 1986) is repealed.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

''Sec. 3511. Safe harbor for determining that certain individuals are not employees.''

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by, and the provisions of, this section shall apply to services performed after the date of enactment of this Act.

(2) DETERMINATIONS BY SECRETARY.—Section 3511(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to determinations after the date of enactment of this Act.

(3) SECTION 530(d).—The amendment made by subsection (c) shall apply to periods ending after the date of enactment of this Act.

HOME-BASED BUSINESS FAIRNESS ACT OF 1977—DESCRIPTION OF PROVISIONS

SHORT TITLE

Under Section 1 of the bill, the name of the legislation is ''Home-Based Business Fairness Act of 1997.''

INCREASE IN THE DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

Section 2 of the bill amends section 162(*l*)(1) of the Internal Revenue Code of 1986 to increase the deduction for health insurance costs for self-employed individuals to 100 percent beginning on January 1, 1997. Currently the limit on deductibility of health insurance costs for these individuals is 40 percent, and it is scheduled to rise to 80 percent by 2006, under the provisions in the Health Insurance Portability and Accountability Act of 1996, which was signed into law in August 1996. The bill is designed to place self-employed individuals on an equal footing with large businesses which can currently deduct 100% of the health insurance costs of all of their employees.

RESTORATION OF THE HOME-OFFICE DEDUCTION

Section 3 of the bill clarifies the definition of ''principal place of business,'' which relates to the home-office deduction under section 280A of the Internal Revenue Code. The bill permits a home office to include an office where a taxpayer performs his or her essential administrative or management activities such as billing and recordkeeping. In order to qualify for the new definition, the taxpayer must perform these activities on a regular, on-going, and non-incidental basis in the home office and have no other location at which to perform these business activities. This section of the bill will be effective on January 1, 1997.

The bill is designed to address the ambiguities resulting from the Supreme Court's 1993 decision, *Commissioner* v. *Soliman*. That case has been interpreted to require two new tests for the home-office deduction: (1) the customers of a home business must physically visit the home office, and (2) the taxpayer's business income must be generated within the home office itself—not from transactions that occur outside of the home office. The bill is intended to permit taxpayers who perform their services outside the home but use their home office for essential billing and recordkeeping to qualify for the home-office deduction.

SAFE HARBOR FOR INDEPENDENT CONTRACTORS

Section 4 of the bill addresses the worker-classification issue (*e.g.*, whether a worker is an employee or an independent contractor) by creating a new section 3511 of the Internal Revenue Code. The new section will provide a general safe harbor and protection against retroactive reclassification of an independent contractor in certain circumstances. The bill is designed to provide certainty for businesses that enter into independent-contractor relationships and minimize the risk of huge tax bills for back taxes, interest, and penalties if a worker is misclassified.

General safe harbor

Under the general safe harbor, if either of two tests is met, an individual will be treated as an independent contractor and the service recipient will not be treated as an employer. The first test requires that the independent contractor demonstrate economic independence and workplace independence and have a written contract with the service recipient.

Economic independence exists if all of the following apply: the independent contractor has the ability to realize a profit or loss, he or she incurs unreimbursed expenses that are consistent with industry practice and that equal at least 2 percent of the independent contractor's adjusted gross income from the performance of services during the taxable year, and the independent contractor agrees to perform services for a particular amount of time or to complete a specific result or task.

Workplace independence exists if one of the following applies: the independent contractor has a principal place of business (the definition of which includes the provisions of section 3 of the bill, which address the *Soliman* decision); he or she performs services at more than one service recipient's facilities; he or she pays a fair-market rent for the use of the service recipient's facilities, or the independent contractor uses his or her own equipment.

The written contract between the independent contractor and the service recipient must provide that the independent contractor will not be treated as an employee.

Under the second alternative test, an individual will be treated as an independent contractor if he or she conducts business through a corporation or a limited liability company and the independent contractor does not receive benefits from the service recipient—instead the independent contractor would be responsible for his or her own benefits. The independent contractor must also have a written contract with the service provider stating that the independent contractor will not be treated as an employee.

The general safe-harbor provisions also apply to three-party situations in which the independent contractor is paid by a third party, such as a payroll company, rather than directly by the service recipient. The general safe harbor, however, will not apply to a service recipient or a third-party payor if they do not comply with the existing reporting requirements and file 1099s for individuals who work as independent contractors. A limited exception is provided for cases in which the failure to file a 1099 is due to reasonable cause and not willful neglect.

The bill also provides additional relief for cases in which a worker is treated as an independent contractor under the general safe harbor and the IRS later contends that the safe harbor does not apply. In that case, the burden falls on the IRS, rather than the taxpayer, to prove that the safe harbor does not apply. To qualify for this relief the taxpayer must demonstrate a credible argument that it was reasonable to treat the service provider as an independent contractor, and the taxpayer must fully cooperate with reasonable requests from the IRS.

In the event that the general safe harbor does not apply, the bill makes clear that the independent contractor or service recipient can still rely on the 20-factor common law test or other provisions of the Internal Revenue Code applicable in determining whether an individual is an employee or an independent contractor. In addition, the bill does not limit any relief that a taxpayer may be entitled to under Section 530 of the Revenue Act of 1978. The bill also makes clear that the general safe harbor will not be construed as a prerequisite for these other provisions of the law concerning worker classification.

Protection against retroactive reclassification

The bill also provides protection against retroactive reclassification by the IRS of an independent contractor as an employee. For many service recipients who make a good faith effort to classify the worker correctly, this event can result in extensive liability for back employment taxes, interest, and penalties.

Under the bill, if the IRS notifies a service recipient that an independent contractor should have been classified as an employee, the IRS' determination can become effective only 30 days after the date that the IRS sends the notification. To qualify for this provision, the service recipient must show that: There was a written agreement between the parties; the service recipient satisfied the applicable reporting requirements for all taxable years covered by the contract; and there was a reasonable basis for determining that the independent contractor was not an employee and the service provider made the determination in good faith. The bill provides similar protection for independent contractors who are notified by the IRS that they should have been treated as an employee.

The protection against retroactive reclassification is intended to remove some of the uncertainty for taxpayers who must use the IRS's 20-factor common law test. While the bill would prevent the IRS from forcing a service recipient to treat an independent contractor as an employee for past years, the bill makes clear that a service recipient or an independent contractor can still challenge the IRS's prospective reclassification of an independent contractor through administrative or judicial proceedings.

Additional independent contractor provisions

Section 4 of the bill contains two additional provisions designed to assist independent contractors. The first clarifies that an individual's compliance with a statutory or regulatory requirement will not be treated as evidence of control. The 20-factor common law test focuses in part on the business' control over a worker. When the business can direct how, when and where a worker performs a task; such control usually indicates that the worker is an employee rather than an independent contractor. Certain statutory and regulatory requirements, which a business and/or a worker must follow, have been interpreted by the IRS as demonstrating evidence of this type of control when the majority of other factors would lead to the conclusion that a worker is an independent contractor. The bill clarifies that compliance with statutory or regulatory requirements should not be a factor in determining whether an individual is an independent contractor.

Second, the bill would repeal section 530(d) of the Revenue Act of 1978, which was added

by section 1706 of the Tax Reform Act of 1986. This provision precludes technical service providers (e.g., engineers, designers, drafters, computer programmers, systems analysts, and other similarly qualified individuals) who work through a third party, such as a placement broker, from applying the safe harbor under section 530. The bill is designed to level the playing field for individuals in these professions.

Effective dates

In general, the independent-contractor provisions of the bill, including the general safe harbor, will be effective for service performed after the date of enactment of the bill. The protection against retroactive reclassification will be effective for IRS determinations after the date of enactment, and the repeal of section 530(d) will be effective for periods ending after the date of enactment of the bill.

Mr. NICKLES. Mr. President, I am pleased to join my friend and colleague from Missouri, Senator BOND, in the introduction of the Home-Based Business Fairness Act. I compliment Senator BOND for his leadership on these issues and all matters affecting small business as chairman of the Senate Committee on Small Business.

The small, independent business is the engine which drives innovation, job creation, and increased economic activity in this country. I am proud to live in a country where any person can use talent, intelligence, and hard work to start a business. I believe these businesses are the foundation of our free enterprise economy, and the very essence of capitalism.

There are 5 million independent contractors in America according to the Small Business Administration, and almost one-third of all companies use independent contractors to some degree. Further, the SBA estimates that more than 14 million individuals earn some income from home-based businesses, and some 300,000 women start home-based businesses every year.

Unfortunately, Mr. President, the Internal Revenue Code does not always treat small businesses fairly, and it often acts to limit and repress the entrepreneurial spirit. The legislation we are introducing today is intended to address some of the Tax Code's inequities and remove the roadblocks to the creation of new small businesses.

A perfect example of the Tax Code's bias against small business is the treatment of health insurance expenses. Corporations can currently deduct 100 percent of the health insurance costs of their employees. As recently as 2 years ago, self-employed individuals were only allowed to deduct 25 percent of their health insurance costs. Fortunately, the Health Insurance Portability and Accountability Act of 1996 increased this limit to 40 percent this year, with a scheduled increase to 80 percent by 2006. However, the bias against small business continues. Our legislation increases the deduction for health insurance cost for self-employed individuals to 100 percent beginning on January 1, 1997.

For some small business taxpayers, the enemy has not been the IRS or the Congress, but the judiciary. A 1993 Supreme Court decision, Commissioner versus Soliman has been interpreted to require two new tests for the home-office deduction: First, the customers of a home business must physically visit the home office, and second, the taxpayer's business income must be generated within the home office itself—not from transactions that occur outside of the home office. This interpretation has effectively prevented millions of taxpayers from deducting valid, reasonable, and necessary business expenses. The Home-Based Business Fairness Act will permit taxpayers who perform their services outside the home but use their home office for essential billing and recordkeeping to qualify for the home-office deduction, provided they perform these activities on a regular, ongoing, and nonincidental basis in the home office and have no other location at which to perform these business activities. This section of the bill will be effective on January 1, 1997.

Finally, Mr. President, our legislation addresses a major, continuing problem for the small business community. The problem is worker classification—independent contractor or employee. In a perfect world, this issue should be irrelevant. The relationship between a worker and a business would be strictly based on their individual needs, and the Government's only interest would be to collect the same amount of taxes regardless of the relationship.

Unfortunately, however, this is not a perfect world. The complexity of the Tax Code and Congress' failure to provide adequate guidance to small businesses and their workers has resulted in a confusing mess. Left to their own devices, the Internal Revenue Service has adopted an aggressive, proemployee agenda.

For the last 20 years, the classification of workers as contractors or employees has been controlled by a 20-factor common law test which attempts to define a business' control over a worker. This common law test is the bane of employers and workers across the country. The General Accounting Office has called the common law test unclear and subject to conflicting interpretations. Even the Treasury Department has testified that:

> Applying the common law test in employment tax issues does not yield clear, consistent, or even satisfactory answers, and reasonable persons may differ as to the correct classification.

Beyond the 20-factor test, some businesses may avail themselves of a safe harbor enacted in 1978. The section 530 safe harbor prohibits the IRS from reclassifying workers as employees if the business had a reasonable basis for treatment of the workers as independent contractors, or if a past IRS audit did not dispute the workers' classification.

Our bill creates a new worker classification safe harbor and provides limited relief from retroactive worker reclassification, two changes which will resolve many of the problems small businesses face with the IRS. Our bill does not repeal the 20-factor common law test, it does not repeal the section 530 safe harbor, and it does not affect other special worker classification situations such as statutory employees or direct sellers. Put simply, our bill will benefit those businesses and contractors who have not resolved their status with the IRS, while preserving current law for those who are satisfied with it.

To summarize briefly, our legislation protects businesses and contractors who meet one of two tests. The first test measures a worker's economic risk and workplace independence, and requires the two parties to have a written contract and comply with all tax reporting requirements. Under the second test, a worker who conducts business through a corporation or a limited liability company, does not receive benefits from the service recipient, and has a written contract will be treated as an independent contractor.

Our bill also protects businesses from retroactive reclassification of workers and the associated liability for back taxes, interest, and penalties, provided the business had a written contract with the workers, complied with all tax reporting requirements, and had a reasonable basis to treat the workers as contractors. Finally, our legislation repeals section 1706 of the Tax Reform Act of 1986 which precludes third-party technical service workers from the section 530 safe harbor, and it clarifies that compliance with a statutory or regulatory requirements will not be treated as evidence of control for the purpose of worker classification.

Mr. President, the Tax Code reforms included in the Home-Based Business Fairness Act are commonsense solutions to the real problems faced by small businesses. With this bill, Senator BOND and I have tried to address those problems which we believe are most critical to the creation of new small businesses, new jobs, and new economic growth. I encourage my colleagues to give this legislation their thoughtful consideration and join us in this initiative.

Mr. ENZI. Mr. President, I rise in strong support of The Home-Based Business Fairness Act of 1997, introduced today by the chairman of the Small Business Committee, Senator BOND. I know that Senator BOND, Senator NICKLES and Senator SNOWE have worked hard to draft this bill and I am proud to be an original cosponsor. It addresses three concerns that have weighed heavily on the small business community for years: First health insurance fairness; second the home-office deduction; and third the status of independent contractors. I hope the Senate and the House will move quickly to pass this legislation.

It is a good bill because it responds directly to what small businesses have been asking us to do. It will help create

jobs that will put people on welfare back to work. This is an issue that policymakers have been concentrating on since last year's welfare debate—the President has proposed a Welfare to Work Program while Congress is looking at the best ways to stimulate the economy and create jobs. Toward that effort, it is impossible to overlook the importance of small business. Small businesses create nearly 100 percent of this country's new jobs and employ over 65 percent of Americans working in the private sector. And I guarantee it would be small businesses that hire the majority of today's welfare recipients if Government would make it affordable to do so.

Small business is more than the backbone of this country. Small business is the engine of the American Dream. But it needs a system that empowers people, not government. This bill would help people by removing just a couple of the obstacles in the way of that Dream.

When I was elected to the Senate last November, my first choice of committee assignments was the Small Business Committee. My wife, Diana, and I were small businessowners and we have experienced—at one time or another—nearly all of the obstacles that can stand in the way of a successful small business. At this time last year, in fact, my wife and I were balancing our books and paying our taxes—hoping to find that the books still balanced after paying the taxes! So I know what small businessowners are going through. Very recently, I have been there.

There is a lot of talk in this legislative body about improving the environment for small business. In fact, I doubt that any Member would stand up and say he or she does not support small business. We hold hearings and listen to testimony, we provide for White House conferences on small business, we receive stacks of polling data and we create commission after commission to tell us what needs to be done. In the end, we find out what I think we already know—the problem is taxes. Too many and too much.

This bill is a small step in the Tax Code, but a giant step for sensibility. It recognizes some of the revolutionary changes in American business. The advent of personal computers, high speed modems, cell phones, pagers, and fax machines that have enabled Americans to work via audio and video conferencing, from satellite offices, and by telecommuting. Our tax laws have not kept up with the sea of change in American business.

One example of this change is the increasing number of women in our Nation's work force. According to the Bureau of Labor Statistics, 76 percent of mothers with school-age children now work. Among two-parent households, 63 percent report that both parents must work outside the home—in many cases, one works to pay the bills, while the other works to pay the taxes. And of these women entering the work force, 1 in 20 are starting their own businesses and many are home based and that number is rising rapidly. In fact, women start new businesses at twice the rate of men—and with a very good success rate. But the Tax Code needs improvement. It discourages self-employment and home-based business through discrimination and complexity. This bill would change that.

The Home-Based Business Fairness Act would finally put an end to our regressive, two-tiered system that makes self-employed people pay more for their health insurance. It is time to give small business competitive parity with big business. All the technical assistance and loan guarantees in the world cannot overcome unfair tax treatment and disproportionately burdensome regulations. Last year, Congress recognized the inequality by voting to phase in an 80-percent deductibility for health insurance costs. That's a good start. But if we know the tax treatment is not fair, then shouldn't we make it right? America's small businesses need fair and equal treatment.

This legislation would also add fairness for people who work in their homes. Our current outdated Tax Code discriminates against home-based people by restricting their ability to deduct office expenses. The message is, if you can't afford a real office, then you can't deduct your expenses. In this way, we increase the hurdles for entrepreneurs who want to earn a living, but can't afford to rent separate office space. This part of the legislation will benefit thousands of home-based women and men. It is very important and deserves a thoughtful consideration by the Senate.

Another puzzling antibusiness setup that this bill would simplify is the definition of independent contractor. American entrepreneurs—and especially home-based business owners—need a simpler test. I have always believed we could make things a lot easier if we just followed the payroll taxes. Who pays them? Is there a written contract? It does not have to be ''rocket science.'' This legislation would simplify the test so that everyone can understand it—not just the tax attorneys at the Internal Revenue Service.

On that subject, in Wyoming recently, the IRS has taken after the last bastion of budding entrepreneurs, our paper boys. Once again, the thirsty IRS auditors are devising ways to haunt working people—presumed guilty until proven innocent. When did the IRS decide to pick on the hard-earned wages of independent paperboys and girls? They are not now, and never have been, salaried newspaper employees. They are just kids who want to earn some money by working before or after school.

I think we should call this part of the bill, The Paperboy Protection Act. The last bastion for new entrepreneurs needs our help. The small business owners of tomorrow are counting on us to pass this legislation. I thank my colleagues on the Small Business Committee, and the assistant majority leader, for their hard work on the bill. I urge other Senators to support it.

By Mrs. HUTCHISON (for herself, Mr. INHOFE, and Mr. HELMS):

S. 461. A bill to amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes; to the Committee on Labor and Human Resources.

THE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT OF 1997

Mrs. HUTCHISON. Mr. President, I rise today to introduce, along with my colleagues, Mr. INHOFE and Mr. HELMS, the Occupational Safety and Health Reform Act of 1997. This legislation will transform OSHA from an agency that generates fines and paperwork to one that plays a more constructive role in improving worker safety.

Mr. President, the Occupational Safety and Health Act was enacted in 1970. It may not surprise my colleagues that since that time, the incidence of work-related injuries and illnesses has steadily declined. But it may surprise them to learn that in the 25 years prior to enactment of OSHA, workplace injuries declined almost twice as fast as they have since the enactment of OSHA. The reduction of workplace injuries, which had been occurring before OSHA was created, has actually slowed since the agency was created.

One may reasonably ask, why is that the case? Mr. President, I have talked to hundreds of business people throughout my State of Texas and throughout the Nation. Time and again, I have heard stories of burdensome and complex OSHA requirements and of arbitrary and unfair inspections and fines.

The vast majority of other employers in this country desire and strive to see to it that their employees have a safe place to work. Indeed, it is in their own best interest to do so. Injuries are costly: They interrupt production schedules, cause a loss of productivity and increase the burgeoning expense of workers' compensation, not to mention the impact on overall employee morale and productivity.

Many of the employers I speak with would like to work with, rather than against OSHA, but fear that if they take any affirmative steps to improve and review the safety of their workplace, it will only serve to attract aggressive OSHA inspectors. Thus, rather than helping to raise the safety level of American workers, the Occupational Safety and Health Act actually discourages employers in many cases from aggressively working to improve workplace health and safety.

Remarkably, OSHA's response to the growing call for reform of its enforcement tactics has been to seek to expand its territory. Most recently,

OSHA has worked on establishing new and enormously costly standards on ergonomics and even on the prevention of nighttime crime at retail stores.

Mr. President, when Congress established OSHA, it did so with the intent that the agency, employers, and employees would all work toward the common purpose of creating safer and healthier workplace environments. Unfortunately, the culture of OSHA has evolved into one of regulatory excess, punitive enforcement, and standard setting based on arbitrariness rather than sound cost/benefit analysis. Things have gotten so bad that OSHA inspectors have even testified that they have been required to meet monthly quotas for citations and fines.

The bill I am introducing today will restore OSHA to its intended mission by requiring the agency to take a commonsense approach to establishing safety standards and by encouraging cooperation and voluntary improvement rather than confrontation. In brief, the bill:

Requires that OSHA, prior to setting a new standard, establish that a worksite safety hazard exists and consider whether it can economically be corrected using feasible technology;

It provides safety consultation and assistance to small businesses to encourage OSHA compliance;

It gives employers an opportunity to correct problems identified by employees before a formal OSHA complaint is filed, and protects employees who raise safety concerns to their employers;

It stops the practice of citing contractors for the violations of subcontractors whose employees are not under the contractor's control;

It limits employers' liability for the unsafe conduct of employees who have been properly trained and equipped by their employer;

It requires that fines for violations be proportional to their actual impact on employee safety; and

It will end the de facto practice of establishing quotas for enforcement activities.

Mr. President, I realize that there are employers out there who may not care about the safety of their employees. To them, I say, beware. Under this bill, OSHA will be freed to concentrate its resources and enforcement efforts on those employers who willfully disregard workplace safety.

But to the other 99 percent of the honest, hardworking business people in America who want to do right by their employees, I say: We have heard your call for action, and help is on the way. I urge them and I urge my colleagues to support this important legislation.

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

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

S. 461

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

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the ''Occupational Safety and Health Reform Act of 1997''.

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

SEC. 2. USE OF OSHA IN PRIVATE LITIGATION.

Section 4(b)(4) (29 U.S.C. 653(b)(4)) is amended by adding at the end the following: ''An allegation of a violation, a finding of a violation, or an abatement of an alleged violation, under this Act or the standards promulgated under this Act shall not be admissible as evidence in any civil action or used to increase the amount of payments received under any workmen's compensation law for any work-related injury.''.

SEC. 3. DUTIES OF EMPLOYERS AND EMPLOYEES.

Section 5 (29 U.S.C. 654) is amended by adding at the end the following:

''(c) On multiemployer work sites, an employer may not be cited for a violation of this section if the employer—

''(1) has no employees exposed to the violation; and

''(2) has not created the condition that caused the violation or assumed responsibility for ensuring compliance by other employers on the work site.''.

SEC. 4. STANDARD SETTING.

(a) STANDARDS.—Section 6(b)(5) (29 U.S.C. 655(b)(5)) is amended to read as follows:

''(5) The development of a standard under this section shall be based on the latest scientific data in the field and on research demonstrations, experiments, and other information that may be appropriate. In establishing the standard, the Secretary shall consider, and make findings based on, the following factors:

''(A) The standard shall be needed to address a significant risk of material impairment to workers and shall substantially reduce that risk.

''(B) The standard shall be technologically and economically feasible.

''(C) There shall be a reasonable relationship between the costs and benefits of the standard.

''(D) The standard shall provide protection to workers in the most cost-effective manner and minimize employment loss due to the standard in the affected industries and sectors of industries.

''(E) The standard shall set forth objective criteria and the performance desired.''.

(b) VARIANCES.—Section 6(d) (29 U.S.C. 655(d)) is amended by adding at the end the following: ''No citation shall be issued for a violation of an occupational safety and health standard that is the subject of a good faith application for a variance during the period the application is pending before the Secretary.''.

(c) STANDARD PRIORITIES.—The second sentence of section 6(g) (29 U.S.C. 655(g)) is amended to read as follows: ''In determining the priority for establishing standards with regard to toxic materials or the physical agents of toxic materials, the Secretary shall consider the number of workers exposed to the substance, the nature and severity of potential impairment, and the likelihood of the impairment based on information obtained by the Secretary from the Environmental Protection Agency, the Department of Health and Human Services, and other appropriate sources.''.

(d) REGULATORY FLEXIBILITY ANALYSIS.—Section 6 (29 U.S.C. 655) is amended by adding at the end the following:

''(h) In promulgating an occupational safety and health standard under subsection (b), the Secretary shall perform a regulatory flexibility analysis described in sections 603 and 604 of title 5, United States Code.

''(i) In promulgating any occupational safety and health standard under subsection (b), the Secretary shall minimize the time, effort, and costs involved in the retention, reporting, notification, or disclosure of information to the Secretary, to third parties, or to the public. Compliance with the requirement of this subsection may be considered in a review of a petition filed under subsection (f).''.

SEC. 5. INSPECTIONS.

(a) AUTHORITY OF SECRETARY.—Section 8(a) (29 U.S.C. 657(a)) is amended by striking paragraph (2) and inserting the following:

''(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials in such place of employment.

In conducting inspections and investigations under paragraph (2), the Secretary may question any such employer, owner, operator, agent or employee. An interview of an employee by the Secretary may only be in private with the consent of the employee.''.

(b) RECORDKEEPING.—

(1) GENERAL MAINTENANCE.—The first sentence of section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended to read as follows: ''Each employer shall make, keep and preserve, and make available, upon reasonable request and within reasonable limits, to the Secretary or the Secretary of Health and Human Services, such records regarding the activities of the employer relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.''.

(2) RECORDS OR REPORTS ON INJURIES.—Section 8(c) (29 U.S.C. 657(c)) is amended by adding at the end the following:

''(4) In prescribing regulations under this subsection, the Secretary may not require employers to maintain records of, or to make reports on, injuries that do not involve lost work time or that involve employees of other employers.

''(5) In prescribing regulations requiring employers to report work-related deaths and multiple hospitalizations, the Secretary shall include provisions that provide an employer at least 24 hours in which to make the report.''.

(c) INSPECTIONS BASED ON EMPLOYEE COMPLAINTS.—Section 8(f) (29 U.S.C. 657(f)) is amended to read as follows:

''(f)(1)(A) An employee or representative of an employee who believes that a violation of a safety or health standard promulgated under this Act exists in the place of employment of the employee that threatens physical harm, or that an imminent danger exists in the place of the employment of the employee, may request an inspection by providing notice to the Secretary or an authorized representative of the Secretary of the violation or danger.

''(B) The notice under subparagraph (A) shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall state that the alleged violation or danger described in this subparagraph has been brought to the attention of the employer and the employer has refused to take any action to correct the alleged violation or danger.

''(C)(i) The notice under subparagraph (A) shall be signed by the employee or representative of the employee and a copy of the notice shall be provided to the employer or the agent of the employer no later than the time of arrival of an occupational safety and health agency inspector to conduct the inspection.

''(ii) Upon the request of the employee providing the notice under subparagraph (A), the name of the employee and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available pursuant to subsection (i), except that the name of the employee and the names of individual employees shall not be privileged from discovery in a contested case.

''(D) The Secretary may not make an inspection under this subsection except upon request by an employee or a representative of an employee.

''(E) If upon receipt of the notice under subparagraph (A), the Secretary determines that the employee or the representative of the employee has brought the alleged violation or danger to the attention of the employer and the employer has refused to take corrective action, and that there are reasonable grounds to believe the alleged violation or danger still exists, the Secretary shall make a special inspection in accordance with this subsection not later than 30 days after the receipt of the notice under subparagraph (A). The special inspection shall be conducted for the limited purpose of determining whether the alleged violation or danger exists.

''(2) If the Secretary determines either before, or as a result of, an inspection that there are not reasonable grounds to believe a violation or danger described in paragraph (1)(A) exists, the Secretary shall notify the complaining employee or the representative of the employee of the determination and, upon request by the employee or the representative of the employee, shall provide a written statement of the reasons for the determination.''.

(d) TRAINING AND ENFORCEMENT.—Section 8 (29 U.S.C. 657) is amended—

(1) by redesignating subsection (g) as subsection (j); and

(2) by inserting after subsection (f) the following:

''(g) Inspections conducted under this section shall be conducted by at least 1 person who has training in, and is knowledgeable of, the industry or types of hazards being inspected.

''(h)(1) Except as provided in paragraph (2), the Secretary shall not conduct routine inspections of, or enforce any standard, rule, regulation, or order under this Act with respect to—

''(A) an employer who is engaged in a farming operation that does not maintain a temporary labor camp and employs 50 or fewer employees; or

''(B) an employer of not more than 50 employees if the employer is included within a category of employers having an occupational injury or a lost workday case rate (determined under the Standard Industrial Classification Code for which such data are published) that is less than the national average rate as most recently published by the Secretary acting through the Bureau of Labor Statistics under section 24.

''(2) In the case of an employer described in subparagraph (B) of paragraph (1), such paragraph shall not be construed to prohibit the Secretary, with respect to the employer, from—

''(A) providing under this Act consultations, technical assistance, and educational and training services;

''(B) conducting under this Act surveys and studies;

''(C) conducting inspections or investigations in response to employee complaints, issuing citations for violations of this Act found during an inspection, and assessing a penalty for the violations that are not corrected within a reasonable abatement period;

''(D) taking any action authorized by this Act with respect to imminent dangers;

''(E) taking any action authorized by this Act with respect to a report of an employment accident that is fatal to at least 1 employee or that results in hospitalization of at least 3 employees and taking any action pursuant to an investigation of such report; and

''(F) taking any action authorized by this Act with respect to a complaint of discrimination against employees for exercising their rights under this Act.

''(i) Any records or other information created by or for an employer for the purpose of conducting safety and health inspections, audits, or reviews not required by this Act shall not be required to be disclosed by the employer or the agent of the employer in any inspection, investigation, or enforcement proceeding conducted pursuant to this Act.''.

SEC. 6. VOLUNTARY COMPLIANCE.

(a) PROGRAM.—The Occupational Safety and Health Act of 1970 (21 U.S.C. 651 et seq.) is amended by inserting after section 8 the following:

''SEC. 8A. VOLUNTARY COMPLIANCE.

''(a) IN GENERAL.—The Secretary shall by regulation establish a program to encourage voluntary employer and employee efforts to provide safe and healthful working conditions.

''(b) EXEMPTION.—In establishing a program under subsection (a), the Secretary shall, in accordance with subsection (c), provide an exemption from all safety and health inspections and investigations with respect to a place of employment maintained by the employer participating in the program, except that this subsection shall not apply to inspections and investigations conducted for the purpose of—

''(1) determining the cause of a workplace accident that resulted in the death of 1 or more employees or the hospitalization of 3 or more employees; or

''(2) responding to a request for an inspection pursuant to section (8)(f)(1).

''(c) REQUIREMENTS FOR EXEMPTION.—In order to qualify for the exemption provided under subsection (b), an employer shall provide to the Secretary evidence that—

''(1) the place of employment of the employer or conditions of employment have, during the preceding year, been reviewed or inspected under—

''(A) a consultation program provided by any State agency relating to occupational safety and health;

''(B) a certification or consultation program provided by an insurance carrier or other private business entity pursuant to a State program, law, or regulation; or

''(C) a workplace consultation program provided by any other person certified by the Secretary for purposes of providing workplace consultations; or

''(2) the place of employment has an exemplary safety record and the employer maintains a safety and health program for the workplace that—

''(A) includes—

''(i) procedures for assessing hazards to the employees of the employer that are inherent to the operations or business of the employer;

''(ii) procedures for correcting or controlling the hazards in a timely manner based on the severity of the hazard; and

''(iii) employee participation in the program including, at a minimum—

''(I) regular consultation between the employer and the nonsupervisory employees of the employer regarding safety and health issues; and

''(II) the opportunity for the nonsupervisory employees of the employer to make recommendations regarding hazards in the workplace and to receive responses or to implement improvements in response to the recommendations; and

''(B) that requires that participating nonsupervisory employees of the employer have training or expertise on safety and health issues consistent with the responsibilities of the employees.

A program under subparagraph (A) or (B) of paragraph (1) shall include methods that ensure that serious hazards identified in the consultation are corrected within an appropriate time.

''(d) CERTIFICATION.—The Secretary may require that an employer in order to claim the exemption under subsection (b) provides certification to the Secretary, and notice to the employees of the employer, of the eligibility of the employer for an exemption.''.

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end the following:

''(15) The term 'exemplary safety record' means that an employer has had, in the most recent annual reporting of the employer required by the Occupational Safety and Health Administration, no employee death caused by occupational injury and fewer lost workdays due to occupational injury and illness than the average for the industry of which the employer is a part.''.

SEC. 7. EMPLOYER DEFENSES.

Section 9 (29 U.S.C. 658) is amended by adding at the end the following:

''(d) No citation may be issued under subsection (a) to an employer unless the employer knew or with the exercise of reasonable diligence would have known of the presence of an alleged violation. No citation shall be issued under subsection (a) to an employer for an alleged violation of section 5, any standard, rule, or order promulgated pursuant to section 6, any other regulation promulgated under this Act, or any other occupational safety and health standard, if the employer demonstrates that—

''(1) employees of the employer have been provided with the proper training and equipment to prevent such a violation;

''(2) work rules designed to prevent such a violation have been established and adequately communicated to employees by the employer; and

''(3) the failure of employees to observe work rules led to the violation.

''(e) A citation issued under subsection (a) to an employer that violates the requirements of any standard, rule, or order promulgated pursuant to section 6 or any other regulation promulgated under this Act shall be vacated if the employer demonstrates that employees of the employer were protected by alternative methods that were equally or more protective of the safety and health of the employees than the methods required by the standard, rule, order, or regulation in the factual circumstances underlying the citation.

''(f) Subsections (d) and (e) shall not be construed to eliminate or modify other defenses that may exist to any citation.''.

SEC. 8. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) PROCEDURE FOR ENFORCEMENT.—

(1) NOTIFICATION.—The first sentence of section 10(b) (29 U.S.C. 659(b)) is amended to read as follows: ''If the Secretary has reason to believe an employer has failed to correct a violation, for which a citation has been issued, within the period permitted for the correction of the violation, the Secretary

shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has 15 working days after the receipt of such a notification to notify the Secretary that the employer desires to contest the notification of the Secretary or the proposed assessment of penalty. The period for the correction of the violation described in the first sentence shall not begin to run until the time for contestation has expired or the entry of a final order by the Commission in a contested case initiated by the employer in good faith and not solely for delay or avoidance of penalties.''.

(2) BURDEN OF PROOF.—Section 10 (29 U.S.C. 659) is amended by adding at the end the following:

''(d) In all hearings before the Commission relating to a contested citation, there shall be no presumption of a violation of standard, or an existence of a hazard, under this Act. In such cases, the Secretary shall have the burden of proving by a preponderance of the evidence—

''(1) the existence of a violation;

''(2) that the violation for which the citation was issued constitutes a realistic hazard to the safety and health of the affected employees;

''(3) that there is a likelihood that the hazard will result in employee injury;

''(4) that the employer knew or with the exercise of reasonable diligence should have known of the hazard and violation; and

''(5) that a technically and economically feasible method of compliance exists.''.

(b) JUDICIAL REVIEW.—Section 11(a) (29 U.S.C. 660(a)) is amended by inserting after ''conclusive.'' at the end of the sixth sentence the following: ''The court shall make its own determination as to questions of law, including the reasonable interpretation of standards promulgated under this Act, and shall not accord deference to either the Commission or the Secretary.''.

SEC. 9. DISCRIMINATION.

(a) COMPLAINT.—Section 11(c)(2) (29 U.S.C. 660(c)(2)) is amended to read as follows:

''(2)(A)(i) Any employee who believes that such employee has been discharged or otherwise discriminated against by the employer of the employee in violation of this subsection may, within 30 days after such violation occurs, file a complaint with the Secretary alleging the discrimination.

''(ii) A complaint may not be filed under clause (i) after the expiration of the 30-day period described in such clause.

''(B)(i) Upon receipt of a complaint under subparagraph (A) and as the Secretary considers appropriate, the Secretary shall conduct an investigation.

''(ii) If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, the Secretary shall attempt to eliminate the alleged violation by informal methods.

''(iii) Nothing stated or done, during the use of the informal methods applied under clause (ii) may be made public by the Secretary or used as evidence in any subsequent proceeding.

''(iv) The Secretary shall make a determination concerning the complaint as soon as possible and, in any event, not later than 90 days after the date of the filing of the complaint.

''(C) If the Secretary is unable to resolve the alleged violation through informal methods, the Secretary shall notify the parties in writing that conciliation efforts have failed.

''(D)(i) Not later than 90 days after the date on which the Secretary notifies the parties under subparagraph (C) in writing that conciliation efforts have failed, the Secretary may bring an action in any appropriate United States district court against an employer described in subparagraph (A).

''(ii) The employer against whom an action under clause (i) is brought may demand that the issue of discrimination be determined by jury trial.

''(E) Upon a showing of discrimination in an action brought under subparagraph (D)(i), the Secretary may seek, and the court may award, any and all of the following types of relief:

''(i) An injunction to enjoin a continued violation of this subsection.

''(ii) Reinstatement of the employee to the same or equivalent position.

''(iii) Reinstatement of full benefits and seniority rights.

''(iv) Compensation for lost wages and benefits.

''(F) This subsection shall be the exclusive means of securing a remedy for any aggrieved employee.''.

(b) ACCESS TO RECORDS.—Section 11(c)(3) (29 U.S.C. 660(c)(3)) is amended to read as follows:

''(3) Any records of the Secretary, including the files of the Secretary, relating to investigations and enforcement proceedings pursuant to this subsection shall not be subject to inspection and examination by the public while such inspections and proceedings are pending in the United States district court.''.

SEC. 10. INJUNCTION AGAINST IMMINENT DANGER.

Section 13 (29 U.S.C. 662) is amended—

(1) by striking subsection (c);

(2) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(3) by inserting before subsection (b) (as so redesignated by paragraph (2)) the following:

''(a)(1)(A)(i) If the Secretary determines, on the basis of an inspection or investigation under this section, that a condition or practice in a place of employment is such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act, the Secretary—

''(I) may inform the employer, and provide notice, by posting at the place of employment, to the affected employees of the danger; and

''(II) shall request the employer that the condition or practice be corrected immediately or that the affected employees be immediately removed from exposure to such danger.

''(ii) A notice under clause (i) shall be removed by the Secretary from the place of employment not later than 72 hours after the notice was first posted unless a court in a proceeding under subsection (c) requires that the notice be maintained.

''(B) The Secretary shall not prevent the continued activity of the employees of the employer whose presence in the place of employment is necessary—

''(i) to avoid, correct, or remove the imminent danger;

''(ii) to maintain the capacity of a continuous process operation to resume the normal operations of the employer without a cessation of the operations; or

''(iii) to permit the cessation of the operations of the employer to be accomplished in a safe and orderly manner, where the cessation of the operations is necessary.

''(2) No employer shall discharge, or in any manner discriminate against any employee, because the employee has refused to perform a duty that has been identified as the source of an imminent danger by a notice posted pursuant to paragraph (1).''.

SEC. 11. SMALL BUSINESS ASSISTANCE AND TRAINING.

Section 16 (29 U.S.C. 665) is amended—

(1) by inserting ''(a)'' after ''16.''; and

(2) by adding at the end the following:

''(b) The Secretary shall publish and make available to employers a model injury prevention program that if completed by the employer shall be deemed to meet the requirement for an exemption under section 8A or a reduction in penalty under section 17(a)(3)(B).

''(c) The Secretary shall establish and implement a program to provide technical assistance and consultative services for employers and employees, either directly or by grant or contract, concerning work site safety and health and compliance with this Act. The assistance shall be targeted at small employers and the most hazardous industries.

''(d) Consultative services shall be provided to employers through cooperative agreements between the States and the Occupational Safety and Health Administration. The consultative services provided under a cooperative agreement under this subsection shall be the same type of services described in part 1908 of title 39 of the Code of Federal Regulations.

''(e) Not less than one-fourth of the annual appropriation made to the Secretary to carry out this Act shall be expended for the activities described in this section.''.

SEC. 12. PENALTIES.

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) is amended—

(1) by striking subsections (a), (b), (c), (f), (i), (j), and (k);

(2) by redesignating subsections (d), (e), (g), (h), and (l) as subsections (b), (c), (d), (e), and (f), respectively; and

(3) by inserting after ''17.'' the following:

''(a)(1) Any employer who violates the requirements of section 5, any standard, rule, or order promulgated pursuant to section 6, or any other regulation promulgated under this Act may be assessed a civil penalty of not more than $7,000. The Commission shall have authority to assess all civil penalties provided for in this section, giving due consideration to the appropriateness of the penalty with respect to—

''(A) the size of the employer;

''(B) the number of employees exposed to a violation;

''(C) the likely severity of any injuries directly resulting from the violation;

''(D) the probability that the violation could result in injury or illness;

''(E) the good faith of the employer in correcting the violation after the violation has been identified;

''(F) the extent to which employee misconduct was responsible for the violation; and

''(G) the effect of the penalty on the ability of the employee to stay in business.

''(2) In assessing penalties for violations under this section, the Commission shall have authority to determine whether violations should be classified as willful, repeated, serious, other than serious, or de minimus. Regardless of the classification of a violation, there shall be only 1 penalty assessed for each violation. The Commission may not enhance the penalty based on the number of employees exposed to the violation or the number of instances of the same violation.

''(3)(A) A penalty assessed under paragraph (1) shall be reduced by 25 percent in any case in which the employer—

''(i) maintains a written safety and health program for the work site where the violation, for which the penalty was assessed, occurred; or

''(ii) shows that the work site where the violation, for which the penalty was assessed, occurred has an exemplary safety record.

''(B) If the employer maintains a program described in subparagraph (A)(i) and has the record described in subparagraph (A)(ii), the penalty shall be reduced by 50 percent.

''(4) No penalty shall be assessed against an employer for a violation other than a violation previously cited by the Secretary, a violation that creates an imminent danger, a violation that has caused death, or a willful violation that has caused serious injury to an employee, unless the Secretary provides—

''(A) the employer with a written notification of the violation; and

''(B) the employer a reasonable time (but not less than 10 days after the receipt by the employer of the written notification) to correct the violation.''.

(b) CRIMINAL PENALTIES.—Section 17(c) (29 U.S.C. 666(c)) (as so redesignated by subsection (a)) is amended by adding at the end the following: ''No employer shall be subject to any State or Federal criminal prosecution arising out of a workplace accident other than under this subsection.''.

SEC. 13. TRANSFER OF CERTAIN OCCUPATIONAL SAFETY AND HEALTH FUNCTIONS.

(a) TRANSFER OF FUNCTIONS; REPEAL.—

(1) NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH.—The functions and authorities provided to the National Institute of Occupational Safety and Health under section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) are transferred to the Secretary of Labor.

(2) SECRETARY OF HEALTH AND HUMAN SERVICES.—The responsibilities and authorities of the Secretary of Health and Human Services under sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669, 670, and 671) are transferred to the Secretary of Labor.

(3) REPEAL.—Section 22 (29 U.S.C. 671) is repealed.

(b) ADDITIONAL FUNCTIONS.—In carrying out the functions transferred under subsection (a), the Secretary of Labor shall take such actions as are necessary to avoid duplication of programs and to maximize training, education, and research under the Occupational Safety and Health Act of 1970 (29 U.S.C. 671 et seq.).

(c) REFERENCES.—

(1) IN GENERAL.—Each reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(A) the head of the transferred office, or the Secretary of Health and Human Services, with regard to functions transferred under subsection (a), shall be deemed to refer to the Secretary of Labor; and

(B) a transferred office with regard to functions transferred under subsection (a), shall be deemed to refer to the Department of Labor.

(2) DEFINITION.—For the purpose of this subsection, the term ''office'' includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

(d) CONFORMING AMENDMENTS.—Not later than 180 days after the effective date of this Act, if the Secretary of Labor determines (after consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget) that technical and conforming amendments to Federal statutes are necessary to carry out the changes made by this section, the Secretary of Labor shall prepare and submit to Congress recommended legislation containing the amendments.

SEC. 14. ECONOMIC IMPACT ANALYSIS.

The Secretary of Labor shall conduct a continuing comprehensive analysis of the costs and benefits of each standard in effect under section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The Secretary shall report the results of the analysis to Congress upon the expiration of the 2-year period beginning on the date of enactment of this Act and every 2 years thereafter.

SEC. 15. LABOR RELATIONS.

(a) DEFINITIONS.—Paragraph (5) of section 2 of the National Labor Relations Act (29 U.S.C. 152(5)) is amended by adding at the end the following: ''The term does not include a safety committee that is comprised of an employer and the employees of the employer and that is jointly established by the employer and the employees of the employer, or by the employer and a labor organization representing the employees of the employer, to carry out efforts to reduce injuries and disease arising out of employment.''.

(b) UNFAIR LABOR PRACTICES.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the semicolon at the end the following: '': *Provided further*, That it shall not constitute an unfair practice under this paragraph for an employer and the employees of the employer, or for an employer and a labor organization representing the employees of the employer, to jointly establish a safety committee in which the employer and the employees of the employer carry out efforts to reduce injuries and disease arising out of employment''.

By Mr. MACK (for himself, Mr. D'AMATO, Mr. BOND, Mr. FAIRCLOTH and Mr. GRAMS):

S. 462. A bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE PUBLIC HOUSING REFORM AND RESPONSIBILITY ACT OF 1997

Mr. MACK. Mr. President, I am today introducing, along with Senators D'AMATO, BOND, FAIRCLOTH, and GRAMS, the Public Housing Reform and Responsibility Act of 1997. This bill is similar to public and assisted housing reform legislation, S. 1260, that was introduced in the 104th Congress and passed unanimously by the Senate.

The Public Housing Reform and Responsibility Act of 1997 addresses a public housing system fraught with counterproductive rules and regulations that make it impossible for even the best run public housing authorities [PHA's] to operate effectively and efficiently. It will help to make public housing a platform from which residents can achieve the goal of economic independence and self-sufficiency. In addition, it promotes increased residential choice and mobility by increasing opportunities for residents to use tenant-based assistance.

Most public housing today serves only the poorest of the poor—on average those with incomes at 17 percent of area median. The gap between tenant rent contributions and the cost of operating public housing is growing wider than the ability of Federal housing subsidy funds to close it. PHA's are denied the flexibility necessary to maintain the existing supply of public housing in decent and safe condition, and in some cases are even constrained from demolishing vacant or nonviable public housing developments.

Just as these rules have made it difficult for housing authorities to provide and maintain decent and safe housing or to meet basic operating costs, these rules have been even worse for tenants. They have destroyed the ability of families to move up and out of public housing and become economically self-sufficient. Public housing rent rules, in particular, create strong economic disincentives for residents to work or seek higher paying jobs.

The following reforms contained in the Public Housing Reform and Responsibility Act represent significant improvements in current public and assisted housing policies.

First, the bill consolidates a multitude of programs into two flexible block grants to expand the eligible uses of funds and allow more creative and efficient use of resources. The bill also repeals a number of current programs that are obsolete, unused, or unfunded.

Second, it institutes permanent rent reforms such as ceiling rents, earned income adjustments, and minimum rents that provide PHA's with the tools to develop rental policies that encourage and reward work and further the goal of creating mixed-income communities. The bill also removes the floor on rents that may be charged under the Brooke amendment, while assuring that poor families will not pay more than 30 percent of their income for rent.

Third, the bill requires tough, swift action against PHA's with severe management deficiencies and provides HUD or court-appointed receivers with the necessary tools and powers to deal with troubled agencies and protect public housing residents.

Fourth, it requires intervention with respect to severely distressed public housing developments that trap residents in deplorable living conditions and are costly to operate or maintain. It provides residents with alternative housing using vouchers or other available housing.

Fifth, the bill permanently repeals the one-for-one replacement requirement and streamlines the demolition and disposition process to permit PHA's to demolish or sell vacant or obsolete public housing.

Sixth, it gives PHA's broad flexibility to develop or participate with other providers of affordable housing in the development of mixed-income, mixed finance developments.

Seventh, it repeals Federal preferences that have had the unintended consequence of concentrating the poorest of the poor in public housing developments and allows PHA's to operate according to locally established preferences consistent with local housing

needs. The bill still maintains the requirement that most housing assistance be targeted to very low-income households.

Eighth, the Public Housing Reform and Responsibility Act calls on PHA's to increase coordination with State and local welfare agencies to ensure that welfare recipients living in public housing will have the full opportunity to move from welfare to work.

Ninth, the bill provides residents with an active voice in developing the local PHA plans that will govern the operations and management of housing and for direct participation on housing authority boards of directors. It also authorizes funds for resident organizations to develop resident management and empowerment activities.

Finally, it merges the Section 8 voucher and certificate programs into a single, choice-based program designed to operate more effectively in the private marketplace. It repeals requirements that are administratively burdensome to landlords, such as take-one, take-all, endless lease and 90-day termination notice requirements. These reforms will make participation in the section 8 tenant-based program more attractive to private landlords and increase housing choices for lower income families.

The reforms contained in this legislation will significantly improve the nation's public housing and tenant-based rental assistance program and the lives of those who reside in Federally assisted housing. The funding flexibility, substantial deregulation of the day-to-day operations and policies of public authorities, encouragement of mixed-finance developments, policies to deal with distressed and troubled public housing, and rent reforms will change the face of public housing for PHA's, residents, and local communities.

Reform of the public housing system has been and should remain a bipartisan effort. I look forward to working with all of my colleagues toward early passage of this legislation.

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

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

PUBLIC HOUSING REFORM AND RESPONSIBILITY ACT OF 1997 SUMMARY OF KEY PROVISIONS

FINDINGS

Recognizes the Federal government's limited capacity and expertise to manage and oversee 3,400 public housing agencies nationwide. Acknowledges the concentration of the very poor in very poor neighborhoods, disincentives for economic self-sufficiency, and lack of resident choice have been the unintended consequences resulting from Federal micromanagement of housing programs in the past.

PURPOSE

To reform the public housing system by consolidating programs, streamlining program requirements, and providing maximum flexibility and discretion to public housing authorities [PHAs] who perform well with strict accountability to residents and localities, and to address the problems of housing authorities with severe management deficiencies.

BASIC PROVISIONS

Program Consolidation. Consolidates public housing programs into two flexible block grants—one for operating expenses and one for capital needs. Requires HUD to establish new formulas through negotiated rulemaking. Funding for section 8 tenant-based program will continue to be funded as a separate program.

Elimination of Obsolete Regulations. Eliminates all current HUD rules, regulations, handbooks, and notices pertaining to public housing and section 8 tenant-based programs under the United States Housing Act of 1937 one year after enactment; requires HUD to propose new regulations necessary to carry out the revised Act within 9 months.

Public Housing Agency Plan [PHAP]. Refocuses the responsibility for administering public housing back to the PHA, the tenants and the local community. Requires each PHA to submit a comprehensive public housing agency plan to HUD, consistent with the local Comprehensive Housing Affordability Strategy [CHAS] and developed in conjunction with a resident advisory board.

The plan is intended to serve as an operating, management and planning tool for PHAs. Plan requirements, to be established through negotiated rulemaking, would include: a description of the PHA's uses for operating and capital funds; a description of the PHA's management policies; procedures relating to eligibility, selection, and admission; plans for capital improvements and demolition and disposition or properties; and policies regarding rents, security, and tenant empowerment activities. The plan would also include a statement of needs which would describe the needs of the low-income families in the community and on the waiting list and how the PHA intends to address those needs.

HUD review of the public housing agency plan would be limited to determine whether the contents of the plan: (1) set forth the information required to be contained in the plan; (2) are consistent with the information and data available to HUD; and (3) are not prohibited by or inconsistent with the requirements of this Act or any applicable law.

The bill allows HUD to require additional information from troubled PHAs, and a streamlined plan for high-performing PHAs and small PHAs with less than 250 units.

Vouchering Out of Public Housing. Allows PHAs to convert any public housing development to a tenant-based or ''voucher'' system, but requires the vouchering out of all severely ''distressed'' public housing. Requires each PHA, within 2 years, to assess all public housing for the purpose of vouchering out by performing a cost and market analysis and an impact analysis on the affected community; provides HUD with waiver authority for PHAs to conduct the assessment.

Choice and Opportunity for Residents. Provides public housing families with an active voice in developing a PHA plan that is responsive to their needs. Provides funds for resident organizations to develop resident management and empowerment activities.

Federal Preferences. Repeals Federal preferences and allows PHAs to operate according to locally established preferences consistent with local housing needs.

Income Targeting and Eligibility. Allows PHAs in any fiscal year to make units available for initial occupancy to families with incomes up to 80% of median income, except that at least 40% of the units must be reserved for families whose income does not exceed 30% of the area median and at least 75% of the units must be reserved for families whose income does not exceed 60% of area median; requires PHAs to include a plan in the public housing agency plan for achieving a diverse income mix among tenants in each project and among scattered-site public housing. Income targeting provisions for the section 8 tenant-based program are similar to public housing except 50% of vouchers must be reserved for families whose income does not exceed 30% of the area median.

Rent Flexibility. Allows PHAs to set rents at a level not to exceed 30% of a tenant's adjusted income. Encourages PHAs to develop rental policies that reward employment and upward mobility.

Ceiling Rents. Allows PHAs to set ceiling rents that reflect the reasonable rental value of units in order to remove the disincentive for residents to work or seek higher paying jobs where rents are based on a percentage of income.

Minimum Rents. Allows PHAs to set a minimum rent for both Section 8 and public housing units, not to exceed $25 per month.

Income Adjustments. Allows a PHA to disregard certain income in calculating rents to take away the disincentive for tenants to work and earn higher incomes.

Troubled PHAs. Requires HUD to take over or appoint a receiver for PHAs that are in substantial default within one year of enactment. Expands HUD's powers for dealing with troubled PHAs by allowing it to break up troubled agencies into one or more agencies, abrogate contracts that impede correction of the agency's default, and demolish and dispose of a PHA's assets. Allows HUD to provide technical assistance to assist near-troubled PHAs from becoming troubled.

Demolition and Disposition. Repeals the one-for-one replacement requirement and streamlines and makes flexible the demolition and disposition process to permit PHAs to demolish and dispose of vacant or obsolete housing. Authorizes HUD to disapprove any demolition or disposition that is clearly inconsistent with the information and data available to HUD.

No Net Increase in Public Housing Units. Prohibits PHAs from using capital or operating funds to increase the overall number of public housing units they own and/or operate.

Substance, Alcohol Abuse, Criminal Activity. Retains provisions enacted as part of last year's Housing Opportunity Program Extension Act that: (1) require PHAs to prohibit occupancy by, or terminate tenancy of, any person a PHA determines is illegally using a controlled substance or has reasonable cause to believe his/her drug use or alcohol abuse could/does interfere with the health, safety, or right to peaceful enjoyment of other tenants; (2) strengthen the ability of PHAs to evict residents for drug-related criminal activity; (3) deny housing assistance to residents evicted for drug-related activities for up to three years; and (4)