wildlife refuge in western Kentucky. What concerned me then and concerns me now is that those who farm about 7,000 acres within the proposed boundaries of the refuge haven't been heard on whether they support the refuge. As one farmer said to me in a letter last year, ''no one seems to listen to what the majority of the landowners and farmers, who are directly involved, are saying.''

Well, Mr. President, I'm listening. During last month's hearing, one farmer asked for a show of hands, of the landowners present, who supported the refuge. Three hands went up. When he asked how many landowners opposed the refuge, about 60 hands went up. What's worse, when a farmer asked how many landowners had been contacted to determine support for the refuge, the Government officials admitted that not a single landowner had been contacted—despite the fact that the creation of the refuge will depend solely on the number of willing sellers.

Today I am introducing legislation to correct this practice. My bill would require the Fish and Wildlife Service to contact for an independent, non-biased survey of landowners within the boundaries of any proposed refuge. If the survey shows that a majority of the landowners support the refuge, then the Service would be free to proceed with land acquisitions to create it. If not, then the Service would be prohibited from taking additional steps.

Mr. President, my bill is simply common sense: Creating a wildlife refuge depends on the willingness of landowners to sell their property to the Federal Government. We should first determine if there are enough landowners willing to sell enough land to actually create the refuge before we begin to make purchases. It doesn't make sense to draw up plans for a wildlife refuge if there won't be enough land available to create it.

Mr. President, the people of western Kentucky have asked, repeatedly, for their voices to be heard. My legislation will ensure that they will be, and that future refuges respect the wishes of affected communities.

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. 491

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

SECTION 1. LANDOWNER REFERENDA ON REFUGES.

(a) IN GENERAL.—Section 4 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) is amended by adding at the end the following:

''(j) LANDOWNER REFERENDA ON REFUGES.—

''(1) IN GENERAL.—Before acquiring land to establish a refuge of the System or preparing a final environmental assessment or environmental impact statement on the proposed acquisition under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary shall—

''(A) hold a public hearing on the proposed acquisition in the area in which the land proposed to be acquired is located; and

''(B) acting through a private, independent entity, conduct a referendum among owners of the land that will be acquired to establish the refuge to determine whether the owners favor the proposed acquisition.

''(2) APPROVAL OF ACQUISITION.—The Secretary may acquire land to establish a refuge of the System only if a majority of owners of the land voting in the referendum favor the proposed acquisition.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 1996.

By Mr. SARBANES:

S. 492. A bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes; to the Committee on Governmental Affairs.

THE FIREFIGHER PAY FAIRNESS ACT

Mr. SARBANES. Mr. President, today I am introducing legislation to improve the pay system used for Federal firefighters. This bill has three broad purposes: First, to improve pay equality with municipal and other public section firefighters; second, to enhance recruitment and retention of firefighters in order to maintain the highest quality Federal fire service; and third, to encourage Federal firefighters to pursue career advancement and training opportunities.

Fire protection is clearly a major concern at Federal facilities and on Federal lands throughout the Nation. From fighting wildland fires in our national parks and forests to protecting military families from fires in their base housing, Federal firefighters play a vital role in preserving lives and property. One only needs to recall the terrible tragedies in Colorado two summers ago to understand the vital importance of our Federal firefighters.

The Department of Agriculture, the Coast Guard, the Department of Commerce, the Department of Defense, the General Services Administration, the Department of the Interior, and the Department of Veterans Affairs are among the Federal agencies which rely on Federal fire fighters to protect their vast holdings of land and structures. Just like their municipal counterparts, these firefighters are the first line of defense against threats to life and property.

Mr. President, the current system used to pay our Federal firefighters is at best confusing and at worst unfair. These men and women work longer hours than any other public sector firefighters—yet are paid substantially less. The current pay system, which consists of three tiers, is overly complex and, more importantly, is hurting Federal efforts to attract and retain top-quality employees.

Currently, most Federal firefighters work an average 72-hour week under exceptionally demanding conditions. The typical workweek consists of a one-day-off schedule which results in three 24-hours shifts during the remainder of each week. Despite this unusual schedule, firefighters are paid under a modified version of the same General Schedule pay system used for full-time, 40-hour-per-week Federal workers.

The result of the pay modification is that Federal firefighters make less per hour than any other Federal employee at their same grade level. For example: a firefighter who is a GS–5, Step 5 makes $7.21 per hour while other employees at the same grade and step earn $10.34 per hour. Some have tried to justify this by noting that part of a firefighter's day is downtime. However, I must note that all firefighters have substantial duties beyond those at the site of a fire. Adding to this discrepancy is the fact that the average municipal firefighter makes $12.87 per hour.

Mr. President, this has caused the Federal fire service to become a training ground for young men and women who then leave for higher pay elsewhere in the public sector. Continually training new employees is, as my colleagues know, very expensive for any employer.

The Office of Personnel Management is well aware of these problems. In fact, section 102 of the Federal Employees Pay Comparability Act of 1990 [FEPCA], title V of Public Law 101–509, authorizes the establishment of special pay systems for certain Federal occupations. The origin of this provision was a recognition that the current pay classification system did not account for the unique and distinctive employment conditions of Federal protective occupations including the Federal fire service.

In May 1991, I wrote to OPM urging the establishment of a separate pay scale for firefighters under the authority provided for in FEPCA. Subsequently, OPM established an Advisory Committee on Law Enforcement and Protective Occupations consisting of agency personnel and representatives from Federal fire and law enforcement organizations. Beginning in August of 1991, representatives from the Federal fire community began working with OPM and other administration officials to identify and address the problems of paying Federal firefighters under the General Schedule. The committee completed its work in June of 1992 and in December of that year issued a staff report setting forth recommendations to correct the most serious problems with the current pay system.

Mr. President, I regret that since the release of the OPM recommendations, there has been no effort to implement any of the proposals of the advisory task force. In fact, OPM has communicated quite clearly that it has no plans to pursue any solution to the serious pay deficiencies that have been so widely identified and acknowledged.

It would not be necessary to introduce this legislation today had OPM taken the corrective action that, in my view, is so clearly warranted. However, I have determined that legislation appears to be the only vehicle to achieve the necessary changes in the pay system for Federal firefighters.

Mr. President, the Firefighter Pay Fairness Act would improve Federal firefighter pay in several important and straightforward ways. Perhaps most importantly, the bill draws from existing provisions in title V to calculate a true hourly rate for firefighters. This would alleviate the current problem of firefighters being paid considerably less than other General Schedule employees at the same GS level. It would also account for the varying length in the tour of duty for Federal firefighters stationed at different locations.

In addition, the bill would use this hourly rate to ensure that firefighters receive true time and one-half overtime for hours worked over 106 in a biweekly pay period. This is designed to correct the problem, under the current system, where the overtime rate is calculated based on an hourly rate considerably less than base pay.

The Firefighter Pay Fairness Act would also extend these pay provisions to so-called wildland firefighters when they are engaged in firefighting duties. Currently, wildland firefighters are often not compensated for all the time spent responding to a fire event. This legislation would ensure that these protectors of our parks and forests would be paid fairly for ensuring the safety of these invaluable national resources.

It also ensures that firefighters promoted to supervisory positions would be paid at a rate of pay at least equal to what they received before the promotion. This would address a situation, under the current pay system, which discourages employees from accepting promotions because of the significant loss of pay which often accompanies a move to a supervisory position.

Similarly, the bill would encourage employees to get the necessary training in hazardous materials, emergency medicine, and other critical areas by ensuring they do not receive a pay cut while engaged in these training activities.

Mr. President, this legislation is based upon a bill I authorized in the 103d Congress. A bipartisan group of more than 150 Members cosponsored the measure in the Senate and the House last year. The legislation I am introducing today reflects several modifications that were suggested to the bill following substantial discussions with various Members. However, it is identical to the so-called compromise measure that has been discussed with the authorizing as well as the appropriations committees in previous years and received widespread support.

To reduce initial costs and allow oversight of the effectiveness of the legislation, the bill I am introducing today would implement the new pay system and other provisions beginning October 1, 1997. However, the new rate of pay would be phased in over a 4-year period ending October 1, 2002.

Mr. President, I consulted many of the affected groups in developing my legislation. I am very pleased that this bill has been endorsed by the American Federation of Government Employees, the International Association of Fire Chiefs, the International Association of Fire Fighters, the National Association of Government Employees, and the National Federation of Federal Employees.

As I have said before, Mr. President, fairness is the key word. There is no reason why Federal firefighters should be paid dramatically less that their municipal counterparts. As a cochairman of the Congressional Fire Services Caucus, I want to urge all members of the caucus and, indeed, all Members of the Senate to join in cosponsoring this important piece of legislation.

By Mr. KYL (for himself and Mr. GORTON):

S. 493. A bill to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia; to the Committee on the Judiciary.

THE CELLULAR TELEPHONE PROTECTION ACT

Mr. KYL. Mr. President, I rise to introduce the Cellular Telephone Protection Act, which would improve the ability of law enforcement to investigate and prosecute individuals engaged in the activity of cloning cellular phones. Law enforcement officials and wireless carriers support the bill as an important tool to stem this kind of telecommunications fraud.

Cell phones are manufactured with an embedded electronic serial number [ESN], which is transmitted to gain access to the telecommunications network. Those involved in cloning cell phones sit in parked cars outside of airports or along busy roadways to harvest ESN's from legitimate cell phone users and, in a process known as cloning, use software and equipment to insert the stolen numbers into other cell phones, the clones. A single ESN can be implanted into several cloned phones. The cloned phones charge to the account of the lawful, unsuspecting user. Cellular phone carriers must absorb these losses, which, according to the Cellular Telecommunication Industry Association, amounted to about $650 million in 1995, up from $480 million in 1994. The cellular industry is expanding by about 40 percent a year; efforts to combat fraud are imperative to ensure the integrity of our communications network.

Cloning is more than an inconvenience to the 36 million Americans who currently use cellular phone services, and an expense to wireless communication companies who pay for the fraudulent calls. According to the Secret Service, which is the primary Federal agency responsible for investigating telecommunications fraud, cloning abets organized criminal enterprises that use cellular telephones as their preferred method of communication. Cloned phones are extremely popular among drug traffickers and gang members, who oftentimes employ several cloned phones to evade detection by law enforcement. When not selling cloned phones to drug dealers and ruthless street gangs, cloners set up corner-side calling shops where individuals pay a nominal fee to call anywhere in the world on a replicated phone, or simply purchase the illegal phone for a flat amount.

The cellular telephone protection bill clarifies that there is no lawful purpose to posses, produce or sell hardware, known as copycat boxes, or software used for cloning a cellular phone or its ESN. Such equipment and software are easy to obtainn—advertisements hawking cloning equipment appear in computer magazines and on the Internet. There is no legitimate purpose for cloning software and equipment, save for law enforcement and telecommunication service providers using it to improve fraud detection. The bill strikes at the heart of the cloning paraphernalia market by eliminating the requirement for prosecutors to prove that the person selling copycat boxes or cloning software programs intended to defraud. The bill retains an exception for law enforcement to possess otherwise unlawful cloning software, and adds a similar exception for telecommunications service providers.

Moreover, the Cellular Phone Protection Act expands the definition of ''scanning receivers,'' equipment which, unlike cloning software and devices, does have legitimate uses if not used to scan frequencies assigned to wireless communications. The bill clarifies that the definition of scanning receivers encompasses devices that can be used to intercept ESN's even if they are not capable of receiving the voice channel. As mentioned above, criminals harvest ESN's by employing scanners near busy thoroughfares. The revised definition of scanning receiver will ensure that these devices are unlawful when used with an intent to defraud just like scanners that intercept voice.

Finally, the bill increases penalties for those engaged in cloning. A new paradigm is needed for penalizing cloning offenses. Currently, penalties for cloning crimes are based on the monetary loss a carrier suffers, not the potential loss. First-time offenders oftentimes do not face any jail time, which makes these cases unattractive for prosecution. Carriers and law enforcement are forced to choose between keeping the cloner on the telecommunications network to rack up high losses to ensure jail time, or stemming the losses sooner only to have the cloner back on the streets in days. The penalty scheme should be revised to

track another indicator of cloning fraud—the number of electronic serial numbers stolen.

Cloning offenses are serious crimes, and the penalties should reflect this. We know that cloned phones are used to facilitate other crimes—particularly drug trafficking. Additionally, cloning offenses are serious economic crimes in themselves that threaten the integrity of the public communications network. In August, two individuals in New York were arrested for allegedly possessing 80,000 electronic serial numbers. Each of the 80,000 ESN's could be implanted into several cloned phones. I look forward to working with the U.S. Sentencing Commission to achieve a more appropriate sentencing structure for cloning fraud.

The cellular phone protection initiative will help to reduce telecommunications fraud. In the process, other criminal activity will be made more difficult to conduct—cloned phones, now a staple of criminal syndicates, would not be so readily available. I urge my colleagues to support this legislation.

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. 493

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 ''Cellular Telephone Protection Act''.

SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COUNTERFEIT ACCESS DEVICES.

(a) UNLAWFUL ACTS.—Section 1029(a) of title 18, United States Code, is amended—

(1) in paragraph (7), by striking ''use of'' and inserting ''access to'';

(2) by redesignating paragraph (9) as paragraph (10); and

(3) by striking paragraph (8) and inserting the following:

''(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

''(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software that may be used for—

''(A) modifying or copying an electronic serial number; or

''(B) altering or modifying a telecommunications instrument so that the instrument may be used to obtain unauthorized access to telecommunications services; or''.

(b) PENALTIES.—Section 1029(c) of title 18, United States Code, is amended to read as follows:

''(c) PENALTIES.—The punishment for an offense under subsection (a) or (b)(1) is—

''(1) in the case of an offense that does not occur after a conviction for another offense under subsection (a) or (b)(1), or an attempt to commit an offense punishable under subsection (a) or (b)(1), a fine under this title or twice the value obtained by the offense, whichever is greater, imprisonment for not more than 15 years, or both; and

''(2) in the case of an offense that occurs after a conviction for another offense under subsection (a) or (b)(1), or an attempt to commit an offense punishable under subsection (a) or (b)(1), a fine under this title or twice the value obtained by the offense, whichever is greater, imprisonment for not more than 20 years, or both.''.

(c) DEFINITION OF SCANNING RECEIVER.—Section 1029(e)(8) of title 18, United States Code, is amended by inserting before the period at the end the following: ''or any electronic serial number, mobile identification number, personal identification number, or other identifier of any telecommunications service, equipment, or instrument''.

(d) EXCEPTION FOR CERTAIN TELECOMMUNICATIONS SERVICES PROVIDERS.—Section 1029 of title 18, United States Code, is amended by adding at the end the following:

''(g) EXCEPTION FOR CERTAIN TELECOMMUNICATIONS SERVICES PROVIDERS.—

''(1) DEFINITIONS.—In this subsection, the term 'telecommunications carrier' has the same meaning as in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

''(2) PERMISSIBLE ACTIVITIES.—This section does not prohibit any telecommunications carrier, or an officer, agent, or employee of, or a person under contract with a telecommunications carrier, engaged in protecting any property or legal right of the telecommunications carrier, from sending through the mail, sending or carrying in interstate or foreign commerce, having control or custody of, or possessing, manufacturing, assembling, or producing any otherwise unlawful—

''(A) device-making equipment, scanning receiver, or access device; or

''(B) hardware or software used for—

''(i) modifying or altering an electronic serial number; or

''(ii) altering or modifying a telecommunications instrument so that the instrument may be used to obtain unauthorized access to telecommunications services.''.

By Mr. KYL (for himself, Mr. ABRAHAM, and Mr. REID):

S. 494. A bill to combat the overutilization of prison health care services and control rising prisoner health care costs; to the Committee on the Judiciary.

THE FEDERAL PRISON HEALTH CARE COPAYMENT ACT

Mr. KYL. Mr. President. I introduce the Federal Prisoner Health Care Copayment Act, which would require Federal prisoners to pay a nominal fee when they initiate a visit for medical attention. The fee would be deposited in the Federal Crime Victims' Fund. Each time a prisoner pays to heal himself, he will be paying to heal a victim.

Most working, law-abiding Americans are required to pay a copayment fee when they seek medical care. It is time to impose this requirement on Federal prisoners.

To date, at least 20 States—including my home State of Arizona—have implemented statewide prisoner health care copayment programs. In addition to Arizona, the following States have enacted this reform: California, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Oklahoma, Maryland, Minnesota, Mississippi, Nevada, Hew Hampshire, New Jersey, Utah, Virginia, Tennessee, and Wisconsin. Several other States are expected to soon institute a copayment system, including, Alaska, Connecticut, Maine, Montana, Michigan, North Carolina, Oregon, South Carolina, Washington, and Wyoming.

Moreover, according to the National Sheriffs' Association, at least 25 States—some of which have not adopted medical copayment reform on a statewide basis—have jail systems that impose a copayment.

In June, the National Commission on Correctional Health Care held a conference that examined the statewide fee-for-service programs. At the conference, Dr. Ron Waldron of the Federal Bureau of Prisons provided a survey of some of the States that have adopted inmate medical copayment programs and concluded that ''Inmate user fees programs appear to reduce utilization, and do generate modest revenues.''

Dr. Waldron reported that prison copayment laws resulted in the reduction of medical utilization of: between 16 and 29 percent in Florida; between 30 and 50 percent in Kansas; 40 percent in Maryland; 50 percent in Nevada; and between 10 and 18 percent in Oklahoma. Terry Stewart, director of the Arizona Department of Corrections, notes that, ''Over the life of the [Arizona copayment] program, there has been an overall reduction of about 31 percent in the number of requests for health care services. This strongly suggests that inmates are being more discreet about, and giving more considered thought to, their need for medical attention.'' I will have his letter placed in the CONGRESSIONAL RECORD.

Reducing frivolous medical visits saves taxpayers money. A December 28, 1996, New York Post editorial, ''Toward Healthier Prison Budgets,'' which I will also include in the RECORD, reported that the copayment law in New Jersey allowed the State to cut its prison health care budget by $17 million.

As to generating revenue, Dr. Waldron reported that California collects about $60,000 per month in prisoner-copayment fees. In my home State of Arizona, the State has collected about $400,000 since the inception of the program in October 1994.

Not only are inmate copayment plans working well on the statewide level, they are achieving success in jail systems across the United States. In the January-February edition of Sheriff, the National Sheriffs' Association President reported that copayment plans—which, as mentioned above, are operational in jail systems in at least 25 States—have: First, discouraged overuse of service; and second, freed health care staff to provide better care to inmates who truly need medical attention. Yavapai County sheriff, G.C. ''Buck'' Buchanan, in a letter that I will include in the RECORD, writes: ''Prior to the institution of [copayment reform], many inmates in custody were taking advantage of the health care which, or course, must be provided to them. This could be construed as frivolous requests if you will, and took up the valuable time of our health care providers * * *. Since this policy has been in effect, we have realized a reduction in inmate requests for medical services between 45 to 50 percent.''

The success of the prison and jail fee-for-service initiatives should come as no surprise. Common sense says that inmates will be less likely to seek unnecessary medical attention if they are required to pick up part of the tab.

I believe that Congress should follow the lead of the States and provide the Federal Bureau of Prisons with the authority to charge Federal inmates a nominal fee for elective health care visits. The Federal system is particularly ripe for reform. According to the 1996 Corrections Yearbook, the system spends more per inmate on health care than any State except Vermont. Federal inmate health care totaled $327 million in fiscal year 1996, up from $138 million in fiscal year 1990. Average cost per inmate has increased over 60 percent during this period, from $2,204 to $3,549.

The Prisoner Health Care Copayment Act provides that the Director of the Bureau of Prisons shall assess and collect a fee of not less than $3 and not more than $5 for each qualified health care visit. The term ''qualified health care visit'' does not include any health care visit that is: Conducted during the intake process; an annual examination; initiated by the health care staff of the Bureau of Prisons; the direct result of a referral made by a prison official; or an emergency visit. Prisoners who are pregnant or determined to be seriously mentally ill are exempted from the copayment requirement altogether. No prisoner shall be denied treatment on the basis of insolvency.

The act also gives the Director of the Bureau of Prisons the authority to set by regulation a reasonable fee, not to exceed $5, for prescriptions, emergency visits, and juvenile visits. And the legislation permits the Director to charge an inmate's account for medical treatment for injuries an inmate inflicts on himself or others.

As I mentioned above, all fees will be deposited in the Federal Crime Victims' Fund.

Before I conclude, I would like to thank the Arizona Department of Corrections for its assistance in helping me draft this reform. Additionally, I appreciate the assistance that Sheriff Buchanan and his office provided me.

I look forward to working with the Department of Justice, the Bureau of Prisons, and my colleagues on both sides of the aisle, to implement a fee-for-medical-services program—a sensible and overdue reform—for Federal prisoners.

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. 494

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 ''Federal Prisoner Health Care Copayment Act''.

SEC. 2. PRISONER COPAYMENTS FOR HEALTH CARE SERVICES.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

''§ 4048. Prisoner copayments for health care services

''(a) DEFINITIONS.—In this section—

''(1) the term 'account' means the trust fund account (or institutional equivalent) of a prisoner;

''(2) the term 'Director' means the Director of the Bureau of Prisons;

''(3) the term 'health care provider' means any person and who is licensed or certified under State law to provide health care services who is operating within the scope of such license;

''(4) the term 'health care visit' means any visit by a prisoner to an institutional or non-institutional health care provider, if the visit is made at the request of the prisoner;

''(5) the term 'prisoner' means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program; and

''(6) the term 'qualified health care visit' means any health care visit except a health care visit

''(A) that—

''(i) is conducted during the incarceration intake process;

''(ii) is an annual examination;

''(iii) is determined by the health care provider to be an emergency visit;

''(iv) is an immunization;

''(v) is initiated by the health care staff of the Bureau of Prisons; or

''(vi) is the direct result of a referral made by a prison official; or

''(B) by a prisoner who is—

''(i) less than 18 years of age;

''(ii) pregnant; or

''(iii) determined by the appropriate official of the Bureau of Prisons to be seriously mentally ill, or permanently disabled.

''(b) COPAYMENTS FOR HEALTH CARE SERVICES.—The Director shall assess and collect a fee in accordance with this section—

''(1) in an amount equal to not less than $3 and not more than $5, for each qualified health care visit;

''(2) in an amount not to exceed $5, which shall be established by the Director by regulation, for—

''(A) each prescription medication provided to the prisoner by a health care provider; and

''(B) each health care visit described in subparagraph (A)(iii) or (B)(i) of subsection (a)(6); and

''(3) in an amount established by the Director by regulation, for each health care visit occurring as a result of an injury inflicted on a prisoner by another prisoner.

''(c) RESPONSIBILITY FOR PAYMENT.—Each fee assessed under subsection (b) shall be collected by the Director from the account of—

''(1) the prisoner making the health care visit or receiving the prescription medication; or

''(2) in the case of a health care visit described in subsection (b)(3), the prisoner who is determined by the Director to have inflicted the injury.

''(d) TIMING.—Each fee assessed under this section shall be collected from the appropriate account under subsection (c)—

''(1) on the date on which the qualified health care visit occurs; or

''(2) in the case of a prisoner whose account balance is determined by the Director to be insufficient for collection of the fee in accordance with paragraph (1), in accordance with an installment payment plan, which shall be established by the Director by regulation.

''(e) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this section shall be construed to permit any refusal of treatment to a prisoner on the basis that—

''(1) account of the prisoner is insolvent; or

''(2) the prisoner is otherwise unable to pay a fee assessed under this section in accordance with subsection (d)(1).

''(f) USE OF AMOUNTS.—Any amounts collected by the Director under this section shall be deposited in the Crime Victims' Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).

''(g) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of the Federal Prisoner Health Care Copayment Act and annually thereafter, the Director shall submit to Congress a report, which shall include—

''(1) a description of the amounts collected under this section during the preceding 12-month period; and

''(2) an analysis of the effects of the implementation of this section, if any, on the nature and extent of health care visits by prisoners.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 303 of title 18, United States Code, is amended by adding at the end the following:

''4048. Prisoner copayments for health care services.''.

ARIZONA DEPARTMENT OF CORRECTIONS,
Phoenix, AZ, March 7, 1997.

Hon. JON KYL,
U.S. Senate, Senate Hart Office Building, Washington, DC.

Re: Inmate Health Care—Fee for Service

DEAR SENATOR KYL: On October 15, 1994, the Arizona Department of Corrections began its fee for service program for inmate health care. The program was intended to reduce inmate abuse of the health care delivery system, to place on the inmate some responsibility for his/her own health care, and to offset the increasing costs of inmate health care. This program has proven itself effective in accomplishing the purposes intended.

There has been a noticeable decrease in the number of requests for health care services. For example, upon implementation of the program, and depending upon the facility, we experienced an initial reduction of between 40% and 60% in the number health care requests. Over the life of the program, there has been an overall reduction of about 31% in the number of requests for health care services. This strongly suggests that inmates are being more discreet about, and giving more considered thought to, their need for medical attention.

The program has also proven a great benefit to Arizona's taxpayers. From October 15, 1994 through December 31, 1996, the Arizona Department of Corrections has collected $392,843.59 for health care services provided to its inmates. This money is returned to Arizona's general fund, where it can be utilized to fund other State programs. This means that fewer taxpayer dollars are required to fund State programs.

In light of the results achieved by this program in Arizona, I highly recommend that similar programs be adopted by prison and jail systems nationwide, and I support and greatly appreciate your efforts to this end.

Sincerely,

TERRY L. STEWART,
Director.

YAVAPAI COUNTY SHERIFF'S OFFICE,
Prescott, AZ, March 4, 1997.

Senator JON KYL,
2240 Rayburn House Office Building, Washington, DC.

DEAR SENATOR KYL: As you have requested, a copy of the current Yavapai County Sheriff's Office Detention Services Procedure Manual with respect to Inmate Health Care Co-Payment policy, has been attached. This policy is sanctioned under Arizona Revised Statute 31–151 and has been in existence since November 1995.

Prior to the institution of this policy, many inmates in custody were taking advantage of the health care which, of course, must be provided to them. This could be construed as frivolous requests if you will, and took up the valuable time of our health care providers. Time was not being utilized to full potential including any request for psychological analysis and treatment.

Since this policy has been in effect, we have realized a reduction in inmate requests for medical services between 45% to 50%. Consequently, when an inmate is given the choice of how to best spend his money, the preference is not for unnecessary medical care. Those in custody have nothing better to do than take advantage of the system for just a change in the daily routine. This has ceased. There is no denial of medical services, it just becomes a matter of priority for the inmate.

Over the past eleven months, in the special account in which the co-payment fee is retained, approximately $3500.00 has been placed into deposit. Although this is not a large amount of revenue, the savings which have been noticed are that of a reduction in staff time and an increase in the quality of care the physician provides for this service delivery. One could only imagine the magnitude of budget savings if a program such as this were initiated on the federal inmate population.

In Yavapai County this policy has proven to be a success and it is through this success that you have my full support in this proposed legislation.

In matters of mutual concern I remain,

G.C. ''BUCK'' BUCHANAN,
Yavapai County Sheriff.

[From the New York Post, Dec. 28, 1996]

TOWARD HEALTHIER PRISON BUDGETS

Since April, New Jersey has experienced a 60 percent drop in the number of prison inmates seeking medical attention. Have prisoners suddenly begun pursuing a healthier lifestyle? Perhaps—but we prefer to think it has something to do with the fact that inmates must now ante up $5 every time they demand to see a doctor.

New Jersey prison officials are extremely pleased with the new system. The fee deters prisoners with vague or minor complaints or whose primary motivation appears to be simply, to get out of their cells for a few hours.

Result: The state has been able to cut its prison health-care budget by $17 million. Fewer inmates being escorted to and from the infirmary also enhances security within prison walls.

Predictably, the American Civil Liberties Union (ACLU) isn't pleased. It claims the $5 fee—equal to about two days' prison wages—is preventing some chronically ill inmates from seeking proper care. Naturally, a lawsuit has been filed. In May, a judge ruled in favor of the prison system (the decision is being appealed).

Charging prisoners a fee for medical services, however, is nothing new, nor is it unique to New Jersey. Prisons and jails in at least 18 states now charge for health care, up from just nine in 1995. New Jersey has allowed such fees since 1995. In fact, the Bergen County jail charges inmates $10 per doctor visit.

State prison officials dismiss the ACLU's concerns as ''highly speculative.'' Inmates diagnosed with chronic illnesses, the officials point out, are not charged for all visits. One diabetic inmate, interviewed by The New York Times, complained that the fee was a ''burden'' because it meant he could no longer buy ''toothpaste and stuff.'' He admitted, however, that he'd had to pay only ''three or four times'' since April 1.

This isn't exactly Black Hole of Calcutta stuff. New Jersey appears to be making good use of a sound prison-management technique.

By Mr. KYL (for himself, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. COVERDELL, Mr. HELMS, Mr. SHELBY, and Mrs. HUTCHISON):

S. 495. A bill to provide criminal and civil penalties for the unlawful acquisition, transfer, or use of any chemical weapon or biological weapon, and to reduce the threat of acts of terrorism or armed aggression involving the use of any such weapon against the United States, its citizens, or Armed Forces, or those of any allied country, and for other purposes.

THE CHEMICAL AND BIOLOGICAL WEAPONS THREAT REDUCTION ACT OF 1997

Mr. KYL. 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. 495

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Chemical and Biological Weapons Threat Reduction Act of 1997''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Policy.
Sec. 4. Definitions.
TITLE I—PENALTIES FOR UNLAWFUL ACTIVITIES WITHIN THE UNITED STATES OR BY UNITED STATES NATIONALS ABROAD
Subtitle A—Criminal Penalties
Sec. 101. Criminal provisions.
Subtitle B—Civil Penalties
Sec. 111. Designation of lead agency.
Sec. 112. Prohibitions on chemical and biological weapons-related activities.
Sec. 113. Civil penalties.
Sec. 114. Regulatory authority; application of other laws.
Subtitle C—Other Penalties
Sec. 121. Revocations of export privileges.
Sec. 122. Suspension of patent rights.
TITLE II—FOREIGN RELATIONS AND DEFENSE-RELATED PROVISIONS
Sec. 201. Sanctions for use of chemical or biological weapons.
Sec. 202. Continuation and enhancement of multilateral control regimes.
Sec. 203. Criteria for United States assistance to Russia.
Sec. 204. Report on the state of chemical and biological weapons proliferation.
Sec. 205. International conference to strengthen the 1925 Geneva Protocol.
Sec. 206. Restriction on use of funds for the Organization for the Prohibition of Chemical Weapons.
Sec. 207. Enhancements to robust chemical and biological defenses.
Sec. 208. Negative security assurances.
Sec. 209. Riot control agents.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States eliminated its stockpile of biological weapons pursuant to the 1972 Biological Weapons Convention and has pledged to destroy its entire inventory of chemical weapons by 2004, independent of the Chemical Weapons Convention entering into force;

(2) the use of chemical or biological weapons in contravention of international law is abhorrent and should trigger immediate and effective sanctions;

(3) United Nations Security Council Resolution 620, adopted on August 26, 1988, states the intention of the Security Council to consider immediately ''appropriate and effective'' sanctions against any nation using chemical and biological weapons in violation of international law;

(4) the General Agreement on Tariffs and Trade recognizes that national security concerns may serve as legitimate grounds for limiting trade; title XXI of the General Agreement on Tariffs and Trade states that ''nothing in this Agreement shall be construed . . . to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests. . .'';

(5) on September 30, 1993, the President declared by Executive Order No. 12868 a national emergency to deal with ''the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States'' posed by the proliferation of nuclear, biological and chemical weapons, and of the means for delivering such weapons;

(6) Russia has not implemented the 1990 United States-Russian Bilateral Agreement on Destruction and Non-Production of Chemical Weapons and on Measures to Facilitate the Multilateral Convention on Banning Chemical Weapons, known as the ''BDA'', nor has the United States and Russia resolved, to the satisfaction of the United States, the outstanding compliance issues under the Memorandum of Understanding Between the United States of America and the Government of the Union of Soviet Socialist Republics Regarding a Bilateral Verification Experiment and Data Exchange Related To Prohibition on Chemical Weapons, known as the ''1989 Wyoming MOU'';

(7) the Intelligence Community has stated that a number of countries, among them China, Egypt, Iran, Iraq, Libya, North Korea, Syria, and Russia, possess chemical and biological weapons and the means to deliver them;

(8) four countries in the Middle East—Iran, Iraq, Libya, and Syria—have, as a national policy, supported international terrorism;

(9) chemical and biological weapons have been used by states in the past for intimidation and military aggression, most recently during the Iran-Iraq war and by Iraq against its Kurdish minority;

(10) the grave new threat of chemical and biological terrorism has been demonstrated by the 1995 nerve gas attack on the Tokyo subway by the Japanese cult Aum Shinrikyo;

(11) the urgent need to improve domestic preparedness to protect against chemical and

biological threats was underscored by enactment of the 1997 Defense Against Weapons of Mass Destruction Act;

(12) the Department of Defense, in light of growing chemical and biological threats in regions of key concern, including Northeast Asia, and the Middle East, has stated that United States forces must be properly trained and equipped for all missions, including those in which opponents might threaten use of chemical or biological weapons; and

(13) Australia Group controls on the exports of chemical and biological agents, and related equipment, and the Missile Technology Control Regime, together provide an indispensable foundation for international and national efforts to curb the spread of chemical and biological weapons, and their delivery means.

SEC. 3. POLICY.

It should be the policy of the United States to take all appropriate measures to—

(1) prevent and deter the threat or use of chemical and biological weapons against the citizens, Armed Forces, and territory of the United States and its allies, and to protect against, and manage the consequences of, such use should it occur;

(2) discourage the proliferation of chemical and biological weapons, their means of delivery, and related equipment, material, and technology;

(3) prohibit within the United States the development, production, acquisition, stockpiling, and transfer to third parties of chemical or biological weapons, their precursors and related technology; and

(4) impose unilateral sanctions, and seek immediately international sanctions, against any nation using chemical and biological weapons in violation of international law.

SEC. 4. DEFINITIONS.

In this Act:

(1) AUSTRALIA GROUP.—The term ''Australia Group'' refers to the informal forum of countries, formed in 1984 and chaired by Australia, whose goal is to discourage and impede chemical and biological weapons proliferation by harmonizing national export controls on precursor chemicals for chemical weapons, biological weapons pathogens, and dual-use equipment, sharing information on target countries, and seeking other ways to curb the use of chemical weapons and biological weapons.

(2) BIOLOGICAL WEAPON.—The term ''biological weapon'' means the following, together or separately:

(A) Any micro-organism (including bacteria, viruses, fungi, rickettsiae or protozoa), pathogen, or infectious substance, or any naturally occurring, bio-engineered or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, capable of causing—

(i) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(ii) deterioration of food, water, equipment, supplies, or materials of any kind; or

(iii) deleterious alteration of the environment.

(B) Any munition or device specifically designed to cause death or other harm through the toxic properties of those biological weapons specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in this section.

(D) Any living organism specifically designed to carry a biological weapon specified in subparagraph (A) to a host.

(3) CHEMICAL WEAPON.—The term ''chemical weapon'' means the following, together or separately:

(A) Any of the following chemical agents: tabun, Sarin, Soman, GF, VX, sulfur mustard, nitrogen mustard, phosgene oxime, lewisite, phenyldichloroarsine, ethyldichloroarsine, methyldichloroarsine, phosgene, diphosgene, hydrogen cyanide, cyanogen chloride, and arsine.

(B) Any of the 54 chemicals other than a riot control agent that is controlled by the Australia Group as of the date of the enactment of this Act.

(C) Any munition or device specifically designed to cause death or other harm through the toxic properties of a chemical weapon specified in subparagraph (A) or (B), which would be released as a result of the employment of such munition or device.

(D) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in this section.

(4) KNOWINGLY.—The term ''knowingly'' is used within the meaning of ''knows'' as that term is defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2) and includes situations in which a person has reason to know.

(5) NATIONAL OF THE UNITED STATES.—The term ''national of the United States'' has the same meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(6) PERSON.—The term ''person'' means any individual, corporation, partnership, firm, association, or other legal entity.

(7) PURPOSE NOT PROHIBITED UNDER THIS ACT.—The term ''purpose not prohibited under this Act'' means—

(A) any industrial, agricultural, research, medical, pharmaceutical, or other peaceful purpose;

(B) any protective purpose, namely any purpose directly related to protection against a chemical or biological weapon;

(C) any military purpose that is not connected with the use of a chemical or biological weapon or that is not dependent on the use of the toxic properties of the chemical or biological weapon to cause death or other harm; or

(D) any law enforcement purpose, including any domestic riot control purpose.

(8) RIOT CONTROL AGENT.—The term ''riot control agent'' means any substance, including diphenylchloroarsine, diphenylcyanoarsine, adamsite, chloroacetophenone, chloropicrin, bromobenzyl cyanide, 0-chlorobenzylidene malononitrile, or 3-Quinuclidinyl benzilate, that is designed or used to produce rapidly in humans any nonlethal sensory irritation or disabling physical effect that disappears within a short time following termination of exposure.

(9) UNITED STATES.—The term ''United States'' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

(A) any of the places within the provisions of section 101(41) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. sec. 1301(41));

(B) any public aircraft or civil aircraft of the United States, as such terms are defined in sections 101 (36) and (18) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. secs. 1301(36) and 1301(18)); and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C., App. sec. 1903(b)).

TITLE I—PENALTIES FOR UNLAWFUL ACTIVITIES WITHIN THE UNITED STATES OR BY UNITED STATES NATIONALS ABROAD

Subtitle A—Criminal Penalties

SEC. 101. CRIMINAL PROVISIONS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 11A the following new chapter:

''CHAPTER 11B—CHEMICAL AND BIOLOGICAL WEAPONS

''Sec.
''229. Penalties and prohibitions with respect to chemical and biological weapons.
''229A. Seizure, forfeiture, and destruction.
''229B. Other prohibitions.
''229C. Injunctions.
''229D. Requests for military assistance to enforce prohibition in certain emergencies.
''229E. Definitions.

''§ 229. Penalties and prohibitions with respect to chemical and biological weapons

''(a) IN GENERAL.—Except as provided in subsection (c), whoever knowingly develops, produces, otherwise acquires, receives from any person located outside the territory of the United States, stockpiles, retains, directly or indirectly transfers, uses, owns, or possesses any chemical weapon or any biological weapon, or knowingly assists, encourages or induces, in any way, any person to do so, or attempt or conspire to do so, shall be fined under this title or imprisoned for life or any term of years or both, unless—

''(1) the chemical weapon or biological weapon is intended for a purpose not prohibited under this Act;

''(2) the types and quantities of chemical weapons or biological weapons are strictly limited to those that can be justified for such purposes; and

''(3) the amount of such chemical weapons or biological weapons per person at any given time does not exceed a quantity that under the circumstances is inconsistent with the purposes not prohibited under this Act.

''(b) DEATH PENALTY.—Any person who knowingly uses chemical or biological weapons in violation of subsection (a) and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

''(c) EXCLUSION.—

''(1) IN GENERAL.—Subsection (a) does not apply to the retention, ownership, or possession of a chemical weapon or a biological weapon by an agency of the United States or a person described in paragraph (2) pending destruction of the weapon.

''(2) COVERED PERSONS.—A person referred to in paragraph (1) is a member of the Armed Forces of the United States or any other person if the person is authorized by the head of an agency of the United States to retain, own, or possess the chemical or biological weapon.

''(d) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct—

''(1) takes place in the United States; or

''(2) takes place outside of the United States and is committed by a national of the United States.

''(e) REIMBURSEMENT OF COSTS.—The court shall order any person convicted of an offense under this section to reimburse the United States for any expenses incurred by the United States incident to the seizure, storage, handling, transportation, and destruction or other disposition of any property that was seized in connection with an investigation of the commission of the offense by that person. A person ordered to reimburse the United States for expenses

under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered under this subsection to reimburse the United States for the same expenses.

''§ 229A. Seizure, forfeiture, and destruction

''(a) SEIZURE.—

''(1) SEIZURES ON WARRANTS.—The Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any chemical weapon or any biological weapon that is of a type or quantity that, under the circumstances, is inconsistent with the purposes not prohibited under this Act.

''(2) WARRANTLESS SEIZURES.—In exigent circumstances, seizure and destruction of any such chemical weapon or biological weapon described in paragraph (1) may be made by the Attorney General upon probable cause without the necessity for a warrant.

''(b) PROCEDURE FOR FORFEITURE AND DESTRUCTION.—

''(1) IN GENERAL.—Except as provided in subsection (a)(2), property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing.

''(2) BURDEN OF PERSUASION.—At such a hearing, the United States shall bear the burden of persuasion by a preponderance of the evidence.

''(3) PROCEDURES.—The provisions of chapter 46 of this title relating to civil forfeitures shall apply to a seizure or forfeiture under this section except to the extent (if any) that such provisions are inconsistent with this section.

''(4) DESTRUCTION OR OTHER DISPOSITION.—The Attorney General shall provide for the destruction or other appropriate disposition of any chemical or biological weapon seized and forfeited pursuant to this section.

''(c) OTHER SEIZURE, FORFEITURE, AND DESTRUCTION.—

''(1) SEIZURES ON WARRANT.—The Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any chemical weapon or biological weapon that exists by reason of conduct prohibited under section 229 of this title.

''(2) WARRANTLESS SEIZURES.—In exigent circumstances, seizure and destruction of any such chemical weapon or biological weapon described in paragraph (1) may be made by the Attorney General upon probable cause without the necessity for a warrant.

''(3) FORFEITURE AND DESTRUCTION.—Property seized pursuant to this subsection shall be summarily forfeited (within the meaning of section 609(b) of the Tariff Act of 1930) to the United States and destroyed.

''(d) ASSISTANCE.—The Attorney General may request the head of any agency of the United States to assist in the handling, storage, transportation, or destruction of property seized under this section.

''(e) OWNER OR POSSESSOR LIABILITY.—The owner or possessor of any property seized under this section shall be jointly and severally liable to the United States in an action for money damages for any expenses incurred by the United States incident to the seizure, including any expenses relating to the handling, storage, transportation, destruction or other disposition of the seized property.

''§ 229B. Other prohibitions

''(a) IN GENERAL.—Whoever knowingly uses riot control agents as an act of terrorism, or knowingly assists any person to do so, shall be fined under this title or imprisoned for a term of not more than 10 years, or both.

''(b) JURISDICTION.—Conduct prohibited by this section is within the jurisdiction of the United States if the prohibited conduct—

''(1) takes place in the United States; or

''(2) takes place outside of the United States and is committed by a national of the United States.

''§ 229C. Injunctions

''The United States may obtain in a civil action an injunction against—

''(1) the conduct prohibited under section 229 of this title; or

''(2) the preparation or solicitation to engage in conduct prohibited under section 229 of this title.

''§ 229D. Requests for military assistance to enforce prohibition in certain emergencies

''The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 229 of this title in an emergency situation involving a biological weapon or chemical weapon. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.

''§ 229E. Definitions

''In this chapter:

''(1) AUSTRALIA GROUP.—The term 'Australia Group' refers to the informal forum of countries, formed in 1984 and chaired by Australia, whose goal is to discourage and impede chemical and biological weapons proliferation by harmonizing national export controls on precursor chemicals for chemical weapons, biological weapons pathogens, and dual-use equipment, sharing information on target countries, and seeking other ways to curb the use of chemical and biological weapons.

''(2) BIOLOGICAL WEAPON.—The term 'biological weapon' means the following, together or separately:

''(A) Any micro-organism (including bacteria, viruses, fungi, rickettsiae or protozoa), pathogen, or infectious substance, or any naturally occurring, bio-engineered or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, capable of causing—

''(i) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

''(ii) deterioration of food, water, equipment, supplies, or materials of any kind; or

''(iii) deleterious alteration of the environment.

''(B) Any munition or device specifically designed to cause death or other harm through the toxic properties of those biological weapons specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

''(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in this section.

''(D) Any living organism specifically designed to carry a biological weapon specified in subparagraph (A) to a host.

''(3) CHEMICAL WEAPON.—The term 'chemical weapon' means the following, together or separately:

''(A) Any of the following chemical agents: tabun, Sarin, Soman, GF, VX, sulfur mustard, nitrogen mustard, phosgene oxime, lewisite, phenyldichloroarsine, ethyldichloroarsine, methyldichloroarsine, phosgene, diphosgene, hydrogen cyanide, cyanogen chloride, and arsine.

''(B) Any of the 54 chemicals, other than a riot control agent, controlled by the Australia Group as of the date of the enactment of this Act.

''(C) Any munition or device specifically designed to cause death or other harm through the toxic properties of a chemical weapon specified in subparagraph (A) or (B), which would be released as a result of the employment of such munition or device.

''(D) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in this section.

''(4) KNOWINGLY.—The term 'knowingly' is used within the meaning of 'knows' as that term is defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2) and includes situations in which a person has reason to know.

''(5) NATIONAL OF THE UNITED STATES.—The term 'national of the United States' has the same meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

''(6) PERSON.—The term 'person' means any individual, corporation, partnership, firm, association, or other legal entity.

''(7) PURPOSE NOT PROHIBITED UNDER THE ACT.—The term 'purpose not prohibited under this Act' means—

''(A) any industrial, agricultural, research, medical, pharmaceutical, or other peaceful purpose;

''(B) any protective purpose, namely any purpose directly related to protection against a chemical or biological weapon;

''(C) any military purpose that is not connected with the use of a chemical or biological weapon or that is not dependent on the use of the toxic properties of the chemical or biological weapon to cause death or other harm; or

''(D) any law enforcement purpose, including any domestic riot control purpose.

''(8) RIOT CONTROL AGENT.—The term 'riot control agent' means any substance, including diphenylchloroarsine, diphenylcyanoarsine, adamsite, chloroacetophenone, chloropicrin, bromobenzyl cyanide, 0-chlorobenzylidene malononitrile, or 3-Quinuclidinyl benzilate that is designed or used to produce rapidly in humans any nonlethal sensory irritation or disabling physical effect that disappears within a short time following termination of exposure.

''(9) TERRORISM.—The term 'terrorism' means activities that—

''(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

''(B) appear to be intended—

''(i) to intimidate or coerce a civilian population;

''(ii) to influence the policy of a government by intimidation or coercion; or

''(iii) to affect the conduct of a government by assassination or kidnapping.

''(10) UNITED STATES.—The term 'United States' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

''(A) any of the places within the provisions of section 40102(41) of title 49, United States Code;

''(B) any civil aircraft or public aircraft of the United States, as such terms are defined in paragraphs (16) and (37), respectively, of section 40102 of title 49, United States Code; and

''(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).''.

(b) CONFORMING AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended—

(1) by striking the item relating to chapter 10; and

(2) by inserting after the item for chapter 11A the following new item:

"11B. Chemical and Biological Weapons ..... 229".

(c) REPEALS.—The following provisions of law are repealed:

(1) Chapter 10 of title 18, United States Code, relating to biological weapons.

(2) Section 2332c of title 18, United States Code, relating to chemical weapons.

(3) In the table of sections for chapter 113B of title 18, United States Code, the item relating to section 2332c.

Subtitle B—Civil Penalties

SEC. 111. DESIGNATION OF LEAD AGENCY.

The President shall designate the Federal Bureau of Investigation as the agency primarily responsible for implementing the provisions of this subtitle (in this subtitle referred to as the ''Lead Agency'').

SEC. 112. PROHIBITIONS ON CHEMICAL AND BIOLOGICAL WEAPONS-RELATED ACTIVITIES.

(a) CHEMICAL AND BIOLOGICAL WEAPONS ACTIVITIES.—Except as provided in subsection (b), it shall be unlawful for any person located in the United States, or any national of the United States located outside the United States, to develop, produce, otherwise acquire, receive from any person located outside the territory of the United States, stockpile, retain, directly or indirectly transfer, use, own, or possess any chemical weapon or any biological weapon, or to assist, encourage or induce, in any way, any person to do so, or attempt or conspire to do so, unless—

(1) the chemical weapon or biological weapon is intended for a purpose not prohibited under this Act;

(2) the types and quantities of the chemical weapon or biological weapon are strictly limited to those that can be justified for such purpose; and

(3) the amount of the chemical weapon or biological weapon per person at any given time does not exceed a quantity that under the circumstances is inconsistent with the purposes not prohibited under this Act.

(b) EXCLUSION.—

(1) IN GENERAL.—Subsection (a) does not apply to the retention, ownership, or possession of a chemical weapon or a biological weapon by an agency of the United States or a person described in paragraph (2) pending destruction of the weapon.

(2) COVERED PERSONS.—A person referred to in paragraph (1) is a member of the Armed Forces of the United States or any other person if the person is authorized by the head of an agency of the United States to retain, own, or possess the chemical weapon.

(c) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct—

(1) takes place in the United States; or

(2) takes place outside of the United States and is committed by a national of the United States.

SEC. 113. CIVIL PENALTIES.

(a) PENALTY AMOUNT.—Any person that is determined, in accordance with subsection (b), to have violated section 112(a) of this Act shall be required by order to pay a civil penalty in an amount not to exceed $100,000 for each such violation.

(b) HEARING.—

(1) IN GENERAL.—Before imposing an order described in subsection (a) against a person under this subsection for a violation of section 112(a), the head of the Lead Agency shall provide the person or entity with notice and, upon request made within 15 days of the date of the notice, a hearing respecting the violation.

(2) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(3) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person named in the complaint has violated section 102, the administrative law judge shall state his findings of fact and issue and cause to be served on such person an order described in subsection (a).

(4) FACTORS FOR DETERMINATION OF PENALTY AMOUNTS.—In determining the amount of any civil penalty, the administrative law judge shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the head of the Lead Agency unless, within 30 days, the head of the Lead Agency modifies or vacates the decision and order, with or without conditions, in which case the decision and order of the head of the Lead Agency shall become a final order under this subsection. The head of the Lead Agency may not delegate his authority under this paragraph.

(d) OFFSETS.—The amount of the civil penalty under a final order of the Lead Agency may be deducted from any sums owed by the United States to the person.

(e) JUDICIAL REVIEW.—A person adversely affected by a final order respecting an assessment may, within 30 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(f) ENFORCEMENT OF ORDERS.—If a person fails to comply with a final order issued under this subsection against the person and if the person does not file a petition for judicial review under subsection (e), the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States, plus interest at currently prevailing rates calculated from the date of expiration of the 30-day period referred to in subsection (e) or the date of such final judgment, as the case may be. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

SEC. 114. REGULATORY AUTHORITY; APPLICATION OF OTHER LAWS.

(a) REGULATIONS.—The Lead Agency may issue such regulations as are necessary to implement and enforce this subtitle and to amend or revise such regulations as necessary if such Executive orders, directives, or regulations do not require any person to submit information or data on any plant site, plant, chemical weapon, or biological weapon that such person produces, processes, or consumes for purposes not prohibited by this Act.

(b) ENFORCEMENT.—The Lead Agency may designate its officers or employees to conduct investigations pursuant to this Act. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate for the enforcement of this subtitle, or for the imposition of any penalty or liability arising under this subtitle, exercise such authorities as are conferred upon them by other laws of the United States.

Subtitle C—Other Penalties

SEC. 121. REVOCATIONS OF EXPORT PRIVILEGES.

(a) IN GENERAL.—If the President determines, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that any person within the United States, or any national of the United States located outside the United States, has committed any violation of section 112, the President may issue an order for the suspension or revocation of the authority of the person to export from the United States any goods or technology (as such terms are defined in section 16 of the Export Administration Act of 1979 (50 U.S.C. app. 2415)).

(b) REPEAL.—Section 11C of the Export Administration Act of 1979 (50 U.S.C. app. 2410c), relating to chemical and biological weapons proliferation sanctions, is repealed.

SEC. 122. SUSPENSION OF PATENT RIGHTS.

(a) SUSPENSION.—The term of any patent granted pursuant to title 35, United States Code, held by any person, including any subsidiary of such person, who knowingly violates any provision of section 112 of this Act shall be suspended for a period of three years.

(b) EFFECT ON PATENT RIGHTS.—

(1) PROHIBITION.—No rights under title 35, United States Code, shall be derived from any patent described in subsection (a) during the period of any such suspension.

(2) NO EXTENSION OF PATENT TERM.—Any suspension of patent rights imposed pursuant to the provisions of this section shall not extend the term of any such patent.

(c) PROCEDURES.—

(1) DETERMINATION BY THE COMMISSIONER.—Within 30 days after the date of enactment of this Act, the Commissioner of Patents, after a determination has been made regarding which person or persons have violated section 112 of this Act, shall recommend the suspension of the appropriate patents.

(2) NOTICES OF VIOLATIONS.—The Commissioner shall notify the holder of such patent within 30 days after the date of such determination and shall publish in the Federal Register a notice of such determination, together with the factual and legal basis for such determination.

(3) HEARINGS.—Any interested person may request, within the 60-day period beginning on the date of publication of a determination, that the Commissioner making the determination hold a hearing on such determination. Such a hearing shall be an informal hearing which is not subject to section 554, 556, or 557 of title 5, United States Code. If such a request is made within such period, the Commissioner shall hold such hearing not later than 30 days after the date of the request, or at the request of the person making the request, not later than 60 days after such date. The Commissioner who is holding the hearing shall provide notice of the hearing to the person involved and to any interested person and provide the owner of record of the patent and any interested person an opportunity to participate in the hearing.

(4) FINAL DETERMINATIONS.—Within 30 days after the completion of the hearing, the Commissioner shall affirm or revise the determination that was the subject of the hearing and shall publish such affirmation or revision in the Federal Register.

(d) FEES.—The Commissioner may establish such fees as are appropriate to cover the costs of carrying out his duties and functions under this section.

(e) CERTIFICATE OF SUSPENSION.—The Commissioner shall make the determination that a patent is suspended and that the requirements of subsection (c) have been complied

with. If the Commissioner determines that the patent is suspended, the Commissioner shall issue to the owner of record of the patent a certificate of suspension, under seal, stating the length of the suspension, and identifying the product and the statute under which regulatory review occurred. Such certificate shall be recorded in the official file of the patent and shall be considered as part of the original patent. The Commissioner shall publish in the Official Gazette of the Patent and Trademark Office a notice of such suspension.

TITLE II—FOREIGN RELATIONS AND DEFENSE-RELATED PROVISIONS

SEC. 201. SANCTIONS FOR USE OF CHEMICAL OR BIOLOGICAL WEAPONS.

(a) IN GENERAL.—The Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended by striking chapter 8 and inserting the following:

"CHAPTER 8—SANCTIONS AGAINST USE OF CHEMICAL OR BIOLOGICAL WEAPONS

"SEC. 81. PURPOSE.

''The purpose of this chapter is—

''(1) to provide for the imposition of sanctions against any foreign government—

''(A) that uses chemical or biological weapons in violation of international law; or

''(B) that has used chemical or biological weapons against its own nationals; and

''(2) to ensure that the victims of the use of chemical or biological weapons shall be compensated and awarded punitive damages, as may be determined by courts in the United States.

"SEC. 82. PRESIDENTIAL DETERMINATION.

''(a) BILATERAL SANCTIONS.—Except as provided in subsections (c) and (d), the President shall, after the consultation with Congress, impose the sanctions described in subsections (a) and (b) of section 83 if the President determines that any foreign government—

''(1) has used a chemical weapon or biological weapon in violation of international law; or

''(2) has used a chemical weapon or biological weapon against its own nationals.

''(b) MULTILATERAL SANCTIONS.—The sanctions imposed pursuant to subsection (a) are in addition to any multilateral sanction or measure that may be otherwise agreed.

''(c) PRESIDENTIAL WAIVER.—The President may waive the application of any of the sanctions imposed pursuant to subsection (a) if the President determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that implementing such measures would have a substantial negative impact upon the supreme national interests of the United States.

''(d) SANCTIONS NOT APPLIED TO CERTAIN EXISTING CONTRACTS.—A sanction described in section 83 shall not apply to any activity pursuant to a contract or international agreement entered into before the date of the Presidential determination under subsection (a) if the President determines that performance of the activity would reduce the potential for the use of a chemical weapon or biological weapon by the sanctioned country.

"SEC. 83. MANDATORY SANCTIONS.

''(a) MINIMUM NUMBER OF SANCTIONS.—After consultation with Congress and making a determination under section 82 with respect to the actions of a foreign government, the President shall impose not less than 5 of the following sanctions against that government for a period of three years:

''(1) FOREIGN ASSISTANCE.—The United States Government shall terminate assistance under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.

''(2) ARMS SALES.—The United States Government shall not sell any item on the United States Munitions List and shall terminate sales to that country under this Act of any defense articles, defense services, or design and construction services. Licenses shall not be issued for the export to the sanctioned country of any item on the United States Munitions List, or for commercial satellites.

''(3) ARMS SALE FINANCING.—The United States Government shall terminate all foreign military financing under this Act.

''(4) DENIAL OF UNITED STATES GOVERNMENT CREDIT OR OTHER FINANCIAL ASSISTANCE.—The United States Government shall deny any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.

''(5) EXPORT CONTROLS.—The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on that part of the control list established under section 5(c)(1) of that Act, and all other goods and technology under this Act (excluding food and other agricultural commodities and products) as the President may determine to be appropriate.

''(6) IMPORT RESTRICTIONS.—The President shall issue an order imposing restrictions on the importation into the United States of any service, good, or commodity that is the growth, product, or manufacture of that country.

''(7) MULTILATERAL BANK ASSISTANCE.—The United States shall oppose, in accordance with section 701 of the International Financial Institutions Act, the extension of any loan or financial or technical assistance by international financial institutions.

''(8) BANK LOANS.—The United States Government shall prohibit any United States bank from making any loan or providing any credit, including to any agency or instrumentality of the government, except for loans or credits for the purpose of purchasing food or other agricultural commodities or products.

''(9) AVIATION RIGHTS.—

''(A) IN GENERAL.—

''(i) NOTIFICATION.—The President is authorized to notify the government of a country with respect to which the President has made a determination pursuant to section 82(a) of his intention to suspend the authority of foreign air carriers owned or controlled by the government of that country to engage in foreign air transportation to or from the United States.

''(ii) SUSPENSION OF AVIATION RIGHTS.—Within 10 days after the date of notification of a government under subclause (I), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by that government to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

''(B) TERMINATION OF AIR SERVICE AGREEMENTS.—

''(i) IN GENERAL.—The President may direct the Secretary of State to terminate any air service agreement between the United States and a country with respect to which the President has made a determination pursuant to section 82(a), in accordance with the provisions of that agreement.

''(ii) TERMINATION OF AVIATION RIGHTS.—Upon termination of an agreement under this clause, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government of that country to engage in foreign air transportation to or from the United States.

''(C) EXCEPTION.—The Secretary of Transportation may provide for such exceptions from the sanction contained in subparagraph (A) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

''(D) DEFINITIONS.—For purposes of this paragraph, the terms 'aircraft', 'air transportation', and 'foreign air carrier' have the meanings given those terms in section 40102 of title 49, United States Code.

''(10) DIPLOMATIC RELATIONS.—The President shall use his constitutional authorities to downgrade or suspend diplomatic privileges between the United States and that country.

''(b) BLOCKING OF ASSETS.—Upon making a determination under section 82, the President shall take all steps necessary to block any transactions in any property subject to the jurisdiction of the United States in which the foreign country or any national thereof has any interest whatsoever, for the purpose of compensating the victims of the chemical or biological weapons use and for punitive damages as may be assessed.

''(c) STATUTORY CONSTRUCTION.—Nothing in this section limits the authority of the President to impose a sanction that is not specified in this section.

"SEC. 84. REMOVAL OF SANCTIONS.

''(a) CERTIFICATION REQUIREMENT.—The President shall remove the sanctions imposed with respect to a foreign government pursuant to this section if the President determines and so certifies to the Congress, after the end of the three-year period beginning on the date on which sanctions were initially imposed on that country pursuant to section 82, that—

''(1) the government of that country has provided reliable assurances that it will not use any chemical weapon or biological weapon in violation of international law and will not use any chemical weapon or biological weapon against its own nationals;

''(2) the government of the country is willing to accept onsite inspections or other reliable measures to verify that the government is not making preparations to use any chemical weapon or biological weapon in violation of international law or to use any chemical weapon or biological weapon against its own nationals; and

''(3) the government of the country is making restitution to those affected by any use of any chemical weapon or biological weapon in violation of international law or against its own nationals.

''(b) REASONS FOR DETERMINATION.—The certification made under this subsection shall set forth the reasons supporting such determination in each particular case.

''(c) EFFECTIVE DATE.—The certification made under this subsection shall take effect on the date on which the certification is received by the Congress.

"SEC. 85. NOTIFICATIONS AND REPORTS OF CHEMICAL OR BIOLOGICAL WEAPONS USE AND APPLICATION OF SANCTIONS.

''(a) NOTIFICATION.—Not later than 30 days after persuasive information becomes available to the executive branch of Government indicating the substantial possibility of the use of chemical or biological weapons by any person or government, the President shall so notify in writing Congress.

''(b) REPORT.—Not later than 60 days after making a notification under subsection (a), the President shall submit a report to Congress that contains—

''(1) an assessment by the President in both classified and unclassified form of the

circumstances of the suspected use of chemical or biological weapons, including any determination by the President made under section 82 with respect to a foreign government; and

''(2) a description of the actions the President intends to take pursuant to the assessment, including the imposition of any sanctions or other measures pursuant to section 82.

''(c) PROGRESS REPORT.—Not later than 60 days after submission of a report under subsection (b), the President shall submit a progress report to Congress describing actions undertaken by the President under this chapter, including the imposition of unilateral and multilateral sanctions and other punitive measures, in response to the use of any chemical weapon or biological weapon described in the report.

''(d) RECIPIENTS OF NOTIFICATIONS AND REPORTS.—Any notification or report required by this section shall be submitted to the following:

''(1) The Majority Leader of the Senate and the Speaker of the House of Representatives.

''(2) The Committee on Foreign Relations and the Select Committee on Intelligence of the Senate.

''(3) The Committee on International Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

''SEC. 86. DEFINITIONS.

''In this chapter:

''(1) BIOLOGICAL WEAPON.—The term 'biological weapon' means the following, together or separately:

''(A) Any micro-organism (including bacteria, viruses, fungi, rickettsiae or protozoa), pathogen, or infectious substance, or any naturally occurring, bio-engineered or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, capable of causing—

''(i) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

''(ii) deterioration of food, water, equipment, supplies, or materials of any kind; or

''(iii) deleterious alteration of the environment.

''(B) Any munition or device specifically designed to cause death or other harm through the toxic properties of those biological weapons specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

''(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in this section.

''(D) Any living organism specifically designed to carry a biological weapon specified in subparagraph (A) to a host.

''(2) CHEMICAL WEAPON.—The term 'chemical weapon' means the following, together or separately:

''(A) Any of the following chemical agents: tabun, Sarin, Soman, GF, VX, sulfur mustard, nitrogen mustard, phosgene oxime, lewisite, phenyldichloroarsine, ethyldichloroarsine, methyldichloroarsine, phosgene, diphosgene, hydrogen cyanide, cyanogen chloride, and arsine.

''(B) Any of the 54 chemicals, other than a riot control agent, controlled by the Australia Group as of the date of the enactment of this Act.

''(C) Any munition or device specifically designed to cause death or other harm through the toxic properties of a chemical weapon specified in subparagraph (A) or (B), which would be released as a result of the employment of such munition or device.

''(D) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in this section.

''(3) PERSON.—The term 'person' means any individual, corporation, partnership, firm, association, or other legal entity.''.

(b) REPEAL.—Sections 306 through 308 of the Act of December 4, 1991 (Public Law 102–182) are repealed.

SEC. 202. CONTINUATION AND ENHANCEMENT OF MULTILATERAL CONTROL REGIMES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that any collapse of the informal forum of states known as the ''Australia Group'', either through changes in membership or lack of compliance with common export controls, or any substantial weakening of common Australia Group export controls and nonproliferation measures in force as of the date of enactment of this Act, would seriously undermine international and national efforts to curb the spread of chemical and biological weapons and related equipment.

(b) POLICY.—It shall be the policy of the United States—

(1) to continue close cooperation with other countries in the Australia Group in support of its current efforts and in devising additional means to monitor and control the supply of chemicals and biological agents applicable to weapons production;

(2) to maintain an equivalent or more comprehensive level of control over the export of toxic chemicals and their precursors, dual-use processing equipment, human, animal and plant pathogens and toxins with potential biological weapons application, and dual-use biological equipment, as that afforded by the Australia Group as of the date of enactment of this Act;

(3) to block any effort by any Australia Group member to achieve Australia Group consensus on any action that would substantially weaken existing common Australia Group export controls and nonproliferation measures or otherwise undermine the effectiveness of the Australia Group; and

(4) to work closely with other countries also capable of supplying equipment, materials, and technology with particular applicability to the production of chemical or biological weapons in order to devise and harmonize the most effective national controls possible on the transfer of such materials, equipment, and technology.

(c) CERTIFICATION.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the President shall determine and certify to Congress whether—

(1) the Australia Group continues to maintain an equivalent or more comprehensive level of control over the export of toxic chemicals and their precursors, dual-use processing equipment, human, animal, and plant pathogens and toxins with potential biological weapons application, and dual-use biological equipment, as that afforded by the Australia Group as of the date of the last certification under this subsection, or, in the case of the first certification, the level of control maintained as of the date of enactment of this Act; and

(2) the Australia Group remains a viable mechanism for curtailing the spread of chemical and biological weapons-related materials and technology, and whether the effectiveness of the Australia Group has been undermined by changes in membership, lack of compliance with common export controls, or any weakening of common controls and measures that are in effect as of the date of enactment of this Act.

(d) CONSULTATIONS.—

(1) IN GENERAL.—The President shall consult periodically, but not less frequently than twice a year, with the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, on Australia Group export controls and nonproliferation measures.

(2) RESULTING FROM PRESIDENTIAL CERTIFICATION.—If the President certifies that either of the conditions in subsection (c) are not met, the President shall consult within 60 days of such certification with the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives on steps the United States should take to maintain effective international controls on chemical and biological weapons-related materials and technology.

SEC. 203. CRITERIA FOR UNITED STATES ASSISTANCE TO RUSSIA.

(a) IN GENERAL.—Notwithstanding any other provision of law, United States assistance described in subsection (b) may not be provided to Russia unless the President determines and certifies to Congress not later than 180 days after the date of the enactment of this Act, and on an annual basis thereafter, that—

(1) Russia is making reasonable progress in the implementation of the Bilateral Destruction Agreement;

(2) the United States and Russia have resolved, to the satisfaction of the United States, outstanding compliance issues under the Wyoming Memorandum of Understanding and the Bilateral Destruction Agreement;

(3) Russia has fully and accurately declared all information regarding its unitary and binary chemical weapons, chemical weapons production facilities, other facilities associated with the development of chemical weapons, and riot control agents; and

(4) Russia is in compliance with its obligations under the Biological Weapons Convention.

(b) UNITED STATES ASSISTANCE COVERED.—United States assistance described in this subsection is United States assistance provided only for the purposes of—

(1) facilitating the transport, storage, safeguarding, and elimination of any chemical weapon or biological weapon or its delivery vehicle;

(2) preventing the proliferation of any chemical weapon or biological weapon, any component or technology of such a weapon, or any technology or expertise related to such a weapon;

(3) planning, designing, or construction of any destruction facility for a chemical weapon or biological weapon; or

(4) supporting any international science and technology center.

(c) DEFINITIONS.—

(1) BILATERAL DESTRUCTION AGREEMENT.—The term ''Bilateral Destruction Agreement'' means Agreement Between the United States of America and the Union of Soviet Socialist Republics on Destruction and Nonproduction of Chemical Weapons and on Measures to Facilitate the Multilateral Convention on Banning Chemical Weapons, signed on June 1, 1990.

(2) BIOLOGICAL WEAPONS CONVENTION.—The term ''Biological Weapons Convention'' means the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow on April 10, 1972.

(3) WYOMING MEMORANDUM OF UNDERSTANDING.—The term ''Wyoming Memorandum of Understanding'' means the Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding a Bilateral Verification Experiment and Data Exchange Related to

Prohibition on Chemical Weapons, signed at Jackson Hole, Wyoming, on September 23, 1989.

(4) UNITED STATES ASSISTANCE.—The term ''United States assistance'' has the meaning given the term in section 481(e)(4) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(4)).

SEC. 204. REPORT ON THE STATE OF CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION.

Not later than 180 days after the date of enactment of this Act, and every year thereafter, the President shall submit to the Speaker of the House of Representatives and the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate a report containing the following:

(1) PROLIFERATION BY FOREIGN COUNTRIES.—A description of any efforts by China, Egypt, India, Iran, Iraq, Libya, North Korea, Pakistan, Russia, and Syria, and any country that has, during the five years prior to submission of the report, used any chemical weapon or biological weapon or attempted to acquire the material and technology to produce and deliver chemical or biological agents, together with an assessment of the present and future capability of the country to produce and deliver such agents.

(2) FOREIGN PERSONS ASSISTING IN PROLIFERATION.—An identification of—

(A) those persons that in the past have assisted the government of any country described in paragraph (1) in that effort; and

(B) those persons that continue to assist the government of the country described in paragraph (1) in that effort as of the date of the report.

(3) THIRD COUNTRY ASSISTANCE IN PROLIFERATION.—An assessment of whether and to what degree other countries have assisted any government or country described in paragraph (1) in its effort to acquire the material and technology described in that paragraph.

(4) INTELLIGENCE INFORMATION ON THIRD COUNTRY ASSISTANCE.—A description of any confirmed or credible intelligence or other information that any country has assisted the government of any country described in paragraph (1) in that effort, either directly or by facilitating the activities of the persons identified in subparagraph (A) or (B) of paragraph (3) or had knowledge of the activities of the persons identified in subparagraph (A) or (B) of paragraph (3), but took no action to halt or discourage such activities.

(5) INTELLIGENCE INFORMATION ON SUBNATIONAL GROUPS.—A description of any confirmed or credible intelligence or other information of the development, production, stockpiling, or use, of any chemical weapon or biological weapon by subnational groups, including any terrorist or paramilitary organization.

(6) FUNDING PRIORITIES FOR DETECTION AND MONITORING CAPABILITIES.—An identification of the priorities of the executive branch of Government for the development of new resources relating to detection and monitoring capabilities with respect to chemical weapons and biological weapons.

SEC. 205. INTERNATIONAL CONFERENCE TO STRENGTHEN THE 1925 GENEVA PROTOCOL.

(a) DEFINITION.—In this section, the term ''1925 Geneva Protocol'' means the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, done at Geneva June 17, 1925 (26 UST 71; TIAS 8061).

(b) POLICY.—It shall be the policy of the United States—

(1) to work to obtain multilateral agreement to effective, international enforcement mechanisms to existing international agreements that prohibit the use of chemical and biological weapons, to which the United States is a state party; and

(2) pursuant to paragraph (1), to work to obtain multilateral agreement regarding the collective imposition of sanctions and other measures described in chapter 8 of the Arms Export Control Act, as amended by this Act.

(c) RESPONSIBILITY.—The Secretary of State shall, as a priority matter, take steps necessary to achieve United States objectives, as set forth in this section.

(d) SENSE OF THE SENATE.—The Senate urges and directs the Secretary of State to work to convene an international negotiating forum for the purpose of concluding an international agreement on enforcement of the 1925 Geneva Protocol.

(e) ALLOCATION OF FUNDS.—Of the amount authorized to be appropriated to the Department of State for fiscal year 1998 under the appropriations account entitled ''International Conferences and Contingencies'', $5,000,000 shall be available only for payment of salaries and expenses in connection with efforts of the Secretary of State to conclude an international agreement described in subsection (d).

SEC. 206. RESTRICTION ON USE OF FUNDS FOR THE ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS.

None of the funds appropriated pursuant to any provision of law, including previously appropriated funds, may be available to make any voluntary or assessed contribution to the Organization for the Prohibition of Chemical Weapons, or to reimburse any account for the transfer of in-kind items to the Organization, unless or until the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature at Paris January 13, 1993, enters into force for the United States.

SEC. 207. ENHANCEMENTS TO ROBUST CHEMICAL AND BIOLOGICAL DEFENSES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the threats posed by chemical and biological weapons to United States Armed Forces deployed in regions of concern will continue to grow and will undermine United States strategies for the projection of United States military power and the forward deployment of United States Armed Forces;

(2) the use of chemical or biological weapons will be a likely condition of future conflicts in regions of concern;

(3) it is essential for the United States and key regional allies of the United States to preserve and further develop robust chemical and biological defenses;

(4) the United States Armed Forces, both active and nonactive duty, are inadequately equipped, organized, trained, and exercised for operations in chemically and biologically contaminated environments;

(5) the lack of readiness stems from a deemphasis by the executive branch of Government and the United States Armed Forces on chemical and biological defense;

(6) the armed forces of key regional allies and likely coalition partners, as well as civilians necessary to support United States military operations, are inadequately prepared and equipped to carry out essential missions in chemically and biologically contaminated environments;

(7) congressional direction contained in the 1997 Defense Against Weapons of Mass Destruction Act is intended to lead to enhanced domestic preparedness to protect against the use of chemical and biological weapons; and

(8) the United States Armed Forces should place increased emphasis on potential threats to deployed United States Armed Forces and, in particular, should make countering the use of chemical and biological weapons an organizing principle for United States defense strategy and for the development of force structure, doctrine, planning, training, and exercising policies of the United States Armed Forces.

(b) DEFENSE READINESS TRAINING.—The Secretary of Defense shall take those actions that are necessary to ensure that the United States Armed Forces are capable of carrying out required military missions in United States regional contingency plans despite the threat or use of chemical or biological weapons. In particular, the Secretary of Defense shall ensure that the United States Armed Forces are effectively equipped, organized, trained, and exercised (including at the large unit and theater level) to conduct operations in chemically and biologically contaminated environments that are critical to the success of United States military plans in regional conflicts, including—

(1) deployment, logistics, and reinforcement operations at key ports and airfields;

(2) sustained combat aircraft sortie generation at critical regional airbases; and

(3) ground force maneuvers of large units and divisions.

(c) DISCUSSIONS WITH ALLIED COUNTRIES ON READINESS.—

(1) HIGH-PRIORITY JOINT RESPONSIBILITY OF SECRETARIES OF DEFENSE AND STATE.—The Secretary of Defense and the Secretary of State shall give a high priority to discussions with key regional allies and likely regional coalition partners, including those countries where the United States currently deploys forces, where United States forces would likely operate during regional conflicts, or which would provide civilians necessary to support United States military operations, to determine what steps are necessary to ensure that allied and coalition forces and other critical civilians are adequately equipped and prepared to operate in chemically and biologically contaminated environments.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense and the Secretary of State shall jointly submit to the Committee on Foreign Relations and the Committee on Armed Services of the Senate and to the Speaker of the House of Representatives a report describing—

(A) the results of the discussions held under paragraph (1) and plans for future discussions;

(B) the measures agreed to improve the preparedness of foreign armed forces and civilians; and

(C) any proposals for increased military assistance, including assistance provided through—

(i) the sale of defense articles and defense services under the Arms Export Control Act;

(ii) the Foreign Military Financing program under section 23 of that Act; and

(iii) chapter 5 of part II of the Foreign Assistance Act of 1961 (relating to international military education and training).

(d) UNITED STATES ARMY CHEMICAL SCHOOL.—

(1) COMMAND OF SCHOOL.—The Secretary of Defense shall take those actions that are necessary to ensure that the United States Army Chemical School remains under the oversight of a general officer of the United States Army.

(2) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) the transfer, consolidation, and reorganization of the United States Army Chemical School should not disrupt or diminish the training and readiness of the United States Armed Forces to fight in a chemical-biological warfare environment; and

(B) the Army should continue to operate the Chemical Defense Training Facility at

Fort McClellan until such time as the replacement facility at Fort Leonard Wood is functional.

(e) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, and on January 1 every year thereafter, the President shall submit a report to the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Committee on International Relations, the Committee on National Security, and the Committee on Appropriations of the House of Representatives, and the Speaker of the House of Representatives on previous, current, and planned chemical and biological weapons defense activities of the United States Armed Forces.

(2) CONTENT OF REPORT.—Each report required by paragraph (1) shall include the following information for the previous fiscal year and for the next three fiscal years:

(A) ENHANCEMENT OF DEFENSE AND READINESS.—Proposed solutions to each of the deficiencies in chemical and biological warfare defenses identified in the March 1996 General Accounting Office Report, titled ''Chemical and Biological Defense: Emphasis Remains Insufficient to Resolve Continuing Problems'', and steps being taken pursuant to subsection (b) to ensure that the United States Armed Forces are capable of conducting required military operations to ensure the success of United States regional contingency plans despite the threat or use of chemical or biological weapons.

(B) PRIORITIES.—An identification of priorities of the executive branch of Government in the development of both active and passive defenses against the use of chemical and biological weapons.

(C) RDT&E AND PROCUREMENT OF DEFENSES.—A detailed summary of all budget activities associated with the research, development, testing, and evaluation, and procurement of chemical and biological defenses, set forth by fiscal year, program, department, and agency.

(D) VACCINE PRODUCTION AND STOCKS.—A detailed assessment of current and projected vaccine production capabilities and vaccine stocks, including progress in researching and developing a multivalent vaccine.

(E) DECONTAMINATION OF INFRASTRUCTURE AND INSTALLATIONS.—A detailed assessment of procedures and capabilities necessary to protect and decontaminate infrastructure and installations that support the ability of the United States to project power through the use of its Armed Forces, including progress in developing a nonaqueous chemical decontamination capability.

(F) PROTECTIVE GEAR.—A description of the progress made in procuring lightweight personal protective gear and steps being taken to ensure that programmed procurement quantities are sufficient to replace expiring battledress overgarments and chemical protective overgarments to maintain required wartime inventory levels.

(G) DETECTION AND IDENTIFICATION CAPABILITIES.—A description of the progress made in developing long-range standoff detection and identification capabilities and other battlefield surveillance capabilities for biological and chemical weapons, including progress on developing a multichemical agent detector, unmanned aerial vehicles, and unmanned ground sensors.

(H) THEATER MISSILE DEFENSES.—A description of the progress made in developing and deploying layered theater missile defenses for deployed United States Armed Forces which will provide greater geographic coverage against current and expected ballistic missile threats and will assist the mitigation of chemical and biological contamination through higher altitude intercepts and boost-phase intercepts.

(I) TRAINING AND READINESS.—An assessment of the training and readiness of the United States Armed Forces to operate in chemically and biologically contaminated environments and actions taken to sustain training and readiness, including at national combat training centers.

(J) MILITARY EXERCISES.—A description of the progress made in incorporating consideration about the threat or use of chemical and biological weapons into service and joint exercises as well as simulations, models, and wargames, together with the conclusions drawn from these efforts about the United States capability to carry out required missions, including with coalition partners, in military contingencies.

(K) MILITARY DOCTRINE.—A description of the progress made in developing and implementing service and joint doctrine for combat and noncombat operations involving adversaries armed with chemical or biological weapons, including efforts to update the range of service and joint doctrine to better address the wide range of military activities, including deployment, reinforcement, and logistics operations in support of combat operations, and for the conduct of such operations in concert with coalition forces.

(L) DEFENSE OF CIVILIAN POPULATION.—A description of the progress made in resolving issues relating to the protection of United States population centers from chemical and biological attack and from the consequences of such an attack, including plans for inoculation of populations, consequence management, and progress made in developing and deploying effective cruise missile defenses and a national ballistic missile defense.

SEC. 208. NEGATIVE SECURITY ASSURANCES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that in order to achieve an effective deterrence against attacks of the United States and United States Armed Forces by chemical weapons, the President should reevaluate the extension of negative security assurances by the United States to nonnuclear-weapon states in the context of the Treaty on the Non-Proliferation of Nuclear Weapons.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and to the Speaker of the House of Representatives a report, both in classified and unclassified forms, setting forth—

(1) the findings of a detailed review of United States policy on negative security assurances as a deterrence strategy; and

(2) a determination by the President of the appropriate range of nuclear and conventional responses to the use of chemical or biological weapons against the United States Armed Forces, United States citizens, allies, and third parties.

(c) DEFINITIONS.—In this section:

(1) NEGATIVE SECURITY ASSURANCES.—The term ''negative security assurances'' means the assurances provided by the United States to nonnuclear-weapon states in the context of the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483) that the United States will forswear the use of certain weapons unless the United States is attacked by that nonnuclear-weapon state in alliance with a nuclear-weapon state.

(2) NONNUCLEAR-WEAPON STATES.—The term ''nonnuclear-weapon states'' means states that are not nuclear-weapon states (as defined in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968 (21 UST 483).

SEC. 209. RIOT CONTROL AGENTS.

(a) PROHIBITION.—The President shall not issue any order or directive that diminishes, abridges, or alters the right of the United States to use riot control agents—

(1) in any circumstance not involving international armed conflict; or

(2) in a defensive military mode to save lives in an international armed conflict, as provided for in Executive Order No. 11850 of April 9, 1975.

(b) CIRCUMSTANCES NOT INVOLVING INTERNATIONAL ARMED CONFLICT.—The use of riot control agents under subsection (a)(1) includes the use of such agents in—

(1) peacekeeping or peace support operations;

(2) humanitarian or disaster relief operations;

(3) noncombatant evacuation operations;

(4) counterterrorist operations and the rescue of hostages; and

(5) law enforcement operations and other internal conflicts.

(c) DEFENSIVE MILITARY MODE.—The use of riot control agents under subsection (a)(2) may include the use of such agents—

(1) in areas under direct and distinct United States military control, including the use of such agents for the purposes of controlling rioting or escaping enemy prisoners of war;

(2) to protect personnel or material from civil disturbances, terrorists, and paramilitary organizations;

(3) to minimize casualties during rescue missions of downed air crews and passengers, prisoners of war, or hostages;

(4) in situations where combatants and noncombatants are intermingled; and

(5) in support of base defense, rear area operations, noncombatant evacuation operations, and operations to protect or recover nuclear weapons.

(d) SENSE OF CONGRESS.—It is the sense of Congress that international law permits the United States to use herbicides, under regulations applicable to their domestic use, for control of vegetation within United States bases and installations or around their immediate defensive perimeters.

(e) AUTHORITY OF THE PRESIDENT.—The President shall take all necessary measures, and prescribe such rules and regulations as may be necessary, to ensure that the policy contained in this section is observed by the Armed Forces of the United States.

By Mr. CHAFEE (for himself, Mr. GRAHAM, and Mr. JEFFORDS):

S. 496. A bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax to individuals who rehabilitate historic homes or who are the first purchasers of rehabilitated historic homes for use as a principal residence; to the Committee on Finance.

THE HISTORIC HOMEOWNERSHIP ASSISTANCE ACT

Mr. CHAFEE. Mr. President, all across America, in the small towns and great cities of this country, our heritage as a nation—the physical evidence of our past—is at risk. In virtually every corner of this land, homes in which grandparents and parents grew up, communities and neighborhoods that nurtured vibrant families, schools that were good places to learn and churches and synagogues that were filled on days of prayer, have suffered the ravages of abandonment and decay.

In the decade from 1980 to 1990, Chicago lost 41,000 housing units through abandonment, Philadelphia 10,000, and

St. Louis 7,000. The story in our older small communities has been the same, and the trend continues. It is important to understand that it is not just buildings that we are losing. It is the sense of our past, the vitality of our communities, and the shared values of those precious places.

We need not stand hopelessly by as passive witnesses to the loss of these irreplaceable historic resources. We can act, and to that end I am introducing today the Historic Homeownership Assistance Act along with my distinguished colleagues, Senator GRAHAM of Florida and Senator JEFFORDS.

This legislation is patterned after the existing historic rehabilitation investment tax credit. That legislation has been enormously successful in stimulating private investment in the rehabilitation of buildings of historic importance all across the country. Through its use we have been able to save and reuse a rich and diverse array of historic buildings: landmarks such as Union Station right here in Washington, DC, the Fox River Mills, a mixed use project that was once a derelict paper mill in Appleton, WI, and the Rosa True School, an eight-unit low- and moderate-income rental project in a historic school building in Portland, ME.

In my own State of Rhode Island, Federal tax incentives stimulated the rehabilitation and commercial reuse of more than 300 historic properties. The properties saved include the Hotel Manisses on Block Island, the former Valley Falls Mills complex in Central Falls, and the Honan Block in Woonsocket.

The legislation that I am introducing builds on the familiar structure of the existing tax credit, but with a different focus and a more modest scope and cost. It is designed to empower the one major constituency that has been barred from using the existing credit—homeowners. Only those persons who rehabilitate or purchase a newly rehabilitated home and occupy it as their principal residence would be entitled to this new credit. There would be no passive losses, no tax shelters and no syndications under this bill.

Like the existing investment credit, the bill would provide a credit to homeowners equal to 20 percent of the qualified rehabilitation expenditures made on an eligible building which is used as a principal residence by the owner. Eligible buildings are those individually listed on the National Register of Historic Places or on a nationally certified State or local historic register, or are contributing buildings in national, State or local historic districts. As is the case with the existing credit, the rehabilitation work would have to be performed in compliance with the Secretary of the Interior's Standards for Rehabilitation, although the bill clarifies that such Standards should be interpreted in a manner that takes into consideration economic and technical feasibility.

The bill allows lower-income homebuyers, who may not have sufficient Federal income tax liability to use a tax credit, to convert the credit to mortgage assistance. The legislation would permit such persons to receive an Historic Rehabilitation Mortgage Credit Certificate which they can use with their bank to obtain a lower interest rate on their mortgage or to lower the amount of their downpayment.

The credit would be available to condominiums and co-ops, as well as single-family buildings. If a building is rehabilitated by a developer for resale, the credit would pass through to the homeowner.

One goal of the bill is to provide incentives for middle- and upper-income families to return to older towns and cities. Therefore, the bill does not limit the tax benefits on the basis of income. However, it does impose a cap of $50,000 on the amount of credit which may be taken for a principal residence.

The Historic Homeownership Assistance Act will make ownership of a rehabilitated older home more affordable for homebuyers of modest incomes. It will encourage more affluent families to claim a stake in older towns and neighborhoods. It affords fiscally stressed cities and towns a way to put abandoned buildings back on the tax rolls, while strengthening their income and sales tax bases. It offers developers, realtors and homebuilders a new realm of economic opportunity in revitalizing decaying buildings.

In addition to preserving our heritage, extending this credit will provide an important supplemental benefit—it will boost the economy. Every dollar of Federal investment in historic rehabilitation leverages many more from the private sector. Rhode Island, for example, has used the credit to leverage 252 million dollars in private investment. This investment has created more than 10,000 jobs and 187 million dollars in wages.

The American dream of owning one's own home is a powerful force. This bill can help it come true for those who are prepared to make a personnel commitment to join in the rescue of our priceless heritage. By their actions they can help to revitalize decaying resources of historic importance, create jobs and stimulate economic development, and restore to our older towns and cities a lost sense of purpose and community.

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. 496

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 ''Historic Homeownership Assistance Act''.

SEC. 2. HISTORIC HOMEOWNERSHIP REHABILITATION CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 23 the following new section:

''SEC. 24. HISTORIC HOMEOWNERSHIP REHABILITATION CREDIT.

''(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic home.

''(b) DOLLAR LIMITATION.—

''(1) IN GENERAL.—The credit allowed by subsection (a) with respect to any residence of a taxpayer shall not exceed $50,000 ($25,000 in the case of a married individual filing a separate return).

''(2) CARRYFORWARD OF CREDIT UNUSED BY REASON OF LIMITATION BASED ON TAX LIABILITY.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(c) QUALIFIED REHABILITATION EXPENDITURE.—For purposes of this section:

''(1) IN GENERAL.—The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account—

''(A) in connection with the certified rehabilitation of a qualified historic home, and

''(B) for property for which depreciation would be allowable under section 168 if the qualified historic home were used in a trade or business.

''(2) CERTAIN EXPENDITURES NOT INCLUDED.—

''(A) EXTERIOR.—Such term shall not include any expenditure in connection with the rehabilitation of a building unless at least 5 percent of the total expenditures made in the rehabilitation process are allocable to the rehabilitation of the exterior of such building.

''(B) OTHER RULES TO APPLY.—Rules similar to the rules of clauses (ii) and (iii) of section 47(c)(2)(B) shall apply.

''(3) MIXED USE OR MULTIFAMILY BUILDING.—If only a portion of a building is used as the principal residence of the taxpayer, only qualified rehabilitation expenditures which are properly allocable to such portion shall be taken into account under this section.

''(d) CERTIFIED REHABILITATION.—For purposes of this section:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'certified rehabilitation' has the meaning given such term by section 47(c)(2)(C).

''(2) FACTORS TO BE CONSIDERED IN THE CASE OF TARGETED AREA RESIDENCES, ETC.—

''(A) IN GENERAL.—For purposes of applying section 47(c)(2)(C) under this section with respect to the rehabilitation of a building to which this paragraph applies, consideration shall be given to—

''(i) the feasibility of preserving existing architectural and design elements of the interior of such building,

''(ii) the risk of further deterioration or demolition of such building in the event that certification is denied because of the failure to preserve such interior elements, and

''(iii) the effects of such deterioration or demolition on neighboring historic properties.

''(B) BUILDINGS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply with respect to any building—

''(i) any part of which is a targeted area residence within the meaning of section 143(j)(1), or

''(ii) which is located within an enterprise or empowerment zone,

but shall not apply with respect to any building which is listed in the National Register.

''(3) APPROVED STATE PROGRAM.—The term 'certified rehabilitation' includes a certification made by—

''(A) a State Historic Preservation Officer who administers a State Historic Preservation Program approved by the Secretary of the Interior pursuant to section 101(b)(1) of the National Historic Preservation Act, or

''(B) a local government, certified pursuant to section 101(c)(1) of the National Historic Preservation Act and authorized by a State Historic Preservation Officer, or the Secretary of the Interior where there is no approved State program),

subject to such terms and conditions as may be specified by the Secretary of the Interior for the rehabilitation of buildings within the jurisdiction of such officer (or local government) for purposes of this section.

''(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

''(1) QUALIFIED HISTORIC HOME.—The term 'qualified historic home' means a certified historic structure—

''(A) which has been substantially rehabilitated, and

''(B) which (or any portion of which)—

''(i) is owned by the taxpayer, and

''(ii) is used (or will, within a reasonable period, be used) by such taxpayer as his principal residence.

''(2) SUBSTANTIALLY REHABILITATED.—The term 'substantially rehabilitated' has the meaning given such term by section 47(c)(1)(C); except that, in the case of any building described in subsection (d)(2), clause (i)(I) thereof shall not apply.

''(3) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

''(4) CERTIFIED HISTORIC STRUCTURE.—

''(A) IN GENERAL.—The term 'certified historic structure' has the meaning given such term by section 47(c)(3).

''(B) CERTAIN STRUCTURES INCLUDED.—Such term includes any building (and its structural components) which is designated as being of historic significance under a statute of a State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance.

''(5) ENTERPRISE OR EMPOWERMENT ZONE.—The term 'enterprise or empowerment zone' means any area designated under section 1391 as an enterprise community or an empowerment zone.

''(6) REHABILITATION NOT COMPLETE BEFORE CERTIFICATION.—A rehabilitation shall not be treated as complete before the date of the certification referred to in subsection (d).

''(7) LESSEES.—A taxpayer who leases his principal residence shall, for purposes of this section, be treated as the owner thereof if the remaining term of the lease (as of the date determined under regulations prescribed by the Secretary) is not less than such minimum period as the regulations require.

''(8) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—If the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such stockholder shall be treated as owning the house or apartment which the taxpayer is entitled to occupy as such stockholder.

''(f) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—In the case of a building other than a building to which subsection (g) applies, qualified rehabilitation expenditures shall be treated for purposes of this section as made—

''(1) on the date the rehabilitation is completed, or

''(2) to the extent provided by the Secretary by regulation, when such expenditures are properly chargeable to capital account.

Regulations under paragraph (2) shall include a rule similar to the rule under section 50(a)(2) (relating to recapture if property ceases to qualify for progress expenditures).

''(g) ALLOWANCE OF CREDIT FOR PURCHASE OF REHABILITATED HISTORIC HOME.—

''(1) IN GENERAL.—In the case of a qualified purchased historic home, the taxpayer shall be treated as having made (on the date of purchase) the qualified rehabilitation expenditures made by the seller of such home.

''(2) QUALIFIED PURCHASED HISTORIC HOME.—For purposes of this subsection, the term 'qualified purchased historic home' means any substantially rehabilitated certified historic structure purchased by the taxpayer if—

''(A) the taxpayer is the first purchaser of such structure after the date rehabilitation is completed, and the purchase occurs within 5 years after such date,

''(B) the structure (or a portion thereof) will, within a reasonable period, be the principal residence of the taxpayer,

''(C) no credit was allowed to the seller under this section or section 47 with respect to such rehabilitation, and

''(D) the taxpayer is furnished with such information as the Secretary determines is necessary to determine the credit under this subsection.

''(h) HISTORIC REHABILITATION MORTGAGE CREDIT CERTIFICATE.—

''(1) IN GENERAL.—The taxpayer may elect, in lieu of the credit otherwise allowable under this section, to receive a historic rehabilitation mortgage credit certificate. An election under this paragraph shall be made—

''(A) in the case of a building to which subsection (g) applies, at the time of purchase, or

''(B) in any other case, at the time rehabilitation is completed.

''(2) HISTORIC REHABILITATION MORTGAGE CREDIT CERTIFICATE.—For purposes of this subsection, the term 'historic rehabilitation mortgage credit certificate' means a certificate—

''(A) issued to the taxpayer, in accordance with procedures prescribed by the Secretary, with respect to a certified rehabilitation,

''(B) the face amount of which shall be equal to the credit which would (but for this subsection) be allowable under subsection (a) to the taxpayer with respect to such rehabilitation,

''(C) which may only be transferred by the taxpayer to a lending institution in connection with a loan—

''(i) that is secured by the building with respect to which the credit relates, and

''(ii) the proceeds of which may not be used for any purpose other than the acquisition or rehabilitation of such building, and

''(D) in exchange for which such lending institution provides the taxpayer—

''(i) a reduction in the rate of interest on the loan which results in interest payment reductions which are substantially equivalent on a present value basis to the face amount of such certificate, or

''(ii) if the taxpayer so elects with respect to a specified amount of the face amount of such a certificate relating to a building—

''(I) which is a targeted area residence within the meaning of section 143(j)(1), or

''(II) which is located in an enterprise or empowerment zone,

a payment which is substantially equivalent to such specified amount to be used to reduce the taxpayer's cost of purchasing the building (and only the remainder of such face amount shall be taken into account under clause (i)).

''(3) USE OF CERTIFICATE BY LENDER.—The amount of the credit specified in the certificate shall be allowed to the lender only to offset the regular tax (as defined in section 55(c)) of such lender. The lender may carry forward all unused amounts under this subsection until exhausted.

''(i) RECAPTURE.—

''(1) IN GENERAL.—If, before the end of the 5-year period beginning on the date on which the rehabilitation of the building is completed (or, if subsection (g) applies, the date of purchase of such building by the taxpayer)—

''(A) the taxpayer disposes of such taxpayer's interest in such building, or

''(B) such building ceases to be used as the principal residence of the taxpayer,

the taxpayer's tax imposed by this chapter for the taxable year in which such disposition or cessation occurs shall be increased by the recapture percentage of the credit allowed under this section for all prior taxable years with respect to such rehabilitation.

''(2) RECAPTURE PERCENTAGE.—For purposes of paragraph (1), the recapture percentage shall be determined in accordance with the table under section 50(a)(1)(B), deeming such table to be amended—

''(A) by striking 'If the property ceases to be investment credit property within—' and inserting 'If the disposition or cessation occurs within—', and

''(B) in clause (i) by striking 'One full year after placed in service' and inserting 'One full year after the taxpayer becomes entitled to the credit'.

''(j) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property (including any purchase under subsection (g) and any transfer under subsection (h)), the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(k) PROCESSING FEES.—Any State may impose a fee for the processing of applications for the certification of any rehabilitation under this section provided that the amount of such fee is used only to defray expenses associated with the processing of such applications.

''(l) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any amount for which credit is allowed under section 47.

''(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations where less than all of a building is used as a principal residence and where more than 1 taxpayer use the same dwelling unit as their principal residence.''

(b) CONFORMING AMENDMENT.—Subsection (a) of section 1016 of such Code is amended by striking ''and'' at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting '', and'', and by adding at the end the following new item:

''(27) to the extent provided in section 24(j).''

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is

amended by inserting after the item relating to section 23 the following new item:

''Sec. 24. Historic homeownership rehabilitation credit.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to rehabilitations the physical work on which begins after the date of enactment of this Act.

SUMMARY OF THE HISTORIC HOMEOWNERSHIP ASSISTANCE ACT

Purpose. To provide homeownership incentives and opportunities through the rehabilitation of older buildings in historic districts. To stimulate the revival of decaying neighborhoods and communities, and the preservation of historic buildings and districts through homeownership.

Rate of Credit: Eligible Buildings. The existing Historic Rehabilitation Tax Credit, which provides a credit of 20 percent of qualified rehabilitation expenditures to investors in commercial and rental buildings, is extended to homeowners who rehabilitate or purchase a newly-rehabilitated eligible home and occupy it as a principal residence. In the case of buildings rehabilitated by developers and sold to homeowners, the credit is passed through to the home purchaser. Eligible buildings are those listed individually on the National Register of Historic Places or on a nationally certified state or local register, and contributing buildings in national, state or local historic districts.

Both single-family and multifamily residences, through condominiums and cooperatives, qualify for the credit. In the case of buildings where one section of the structure is slated for residential use and another for commercial use, such as in two- or three-story buildings in downtown areas, purchasers could utilize the historic homeowner tax credit against the rehabilitation expenditures of the residential portion, and the existing commercial rehabilitation tax credit for the remaining portion.

Maximum Credit: Minimum Expenditures. The amount of the homeownership credit is limited to $50,000 for each principal residence. The amount of qualified rehabilitation expenditures must exceed the greater of $5,000 or the adjusted tax basis of the building (excluding the land) within a 24-month period. For buildings in census tracts targeted as distressed for Mortgage Revenue Bond purposes and those in Enterprise and Empowerment Zones, the minimum expenditure is $5,000. At least five percent of the qualified rehabilitation expenditures must be spent on the exterior of the building.

Pass-Through of Credit: Carry-Forward: Recapture. In the event that the rehabilitation is performed by a developer, the credit accrues to the homeowner. The credit cannot be used to offset the developer's tax liability, but instead must be passed through to the home purchaser. The entire amount of the credit is available to reduce federal income tax liability, subject to Alternative Minimum Tax limitations. The credit is available in the year in which the expenditures are made by the taxpayer or a rehabilitated property is purchased by the homeowner. Any unused credit would be carried forward until fully exhausted. In the event the taxpayer fails to maintain the home as a principal residence for five years, the credit is subject to recapture.

No ''Passive Loss''; No Income Limit. The credit is not subject to the ''passive loss'' limitations. Further, since the legislation is intended to promote economic diversity among residents and increase local property, income and sales tax revenues, taxpayers are eligible for the credit without regard to income.

Standards for Historic Rehabilitation. To qualify for the credit, the rehabilitation must be performed in accordance with the Secretary of the Interior's Standards for Rehabilitation, which guide eligibility of expenditures under the existing commercial rehabilitation tax credit. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. The proposed legislation clarifies this directive.

State-Level Certifications. As under the existing commercial rehabilitation tax credit program, State Historic Preservation Officers and Certified Local Governments are given the authority to certify the rehabilitation of buildings within their respective jurisdictions. States are given the authority to levy fees for processing applications for certification of the rehabilitation expenditures, provided that the proceeds of such fees are used solely to defray expenses associated with processing the application.

Historic Rehabilitation Mortgage Credit Certificates. Lower income taxpayers may not have sufficient income tax liability to take full use of the credit. The legislation permits anyone eligible for the income tax credit to convert it into a mortgage credit certificate which could be used either to reduce the interest rate on a home mortgage loan or to lower the down payment required to purchase the property.

Under this option, the taxpayer transfers the certificate to the mortgage lender in exchange for a reduced interest rate on a home mortgage loan. The mortgage lender then uses the credit to reduce its federal income tax liability, subject to Alternative Minimum Tax limitations. The credit claimed by the mortgage lender is not subject to recapture.

In many distressed neighborhoods, the cost of rehabilitating a home and bringing it to market significantly exceeds the value at which the property is appraised by the mortgage lender. This gap imposes a significant burden on a potential homeowner because the required downpayment exceeds his or her means. The legislation permits the mortgage credit certificate to be used to reduce the buyer's downpayment, rather than to reduce the interest rate, in order to close this gap. This provision is limited to historic districts which qualify as targeted under the existing Mortgage Revenue Bond program or are located in enterprise or empowerment zones.

Although the right to receive an Historic Rehabilitation Mortgage Credit Certificate is available to all persons entitled to the tax credit, the certificate may not be used by a person who would be precluded from using the income tax credit because of the Alternative Minimum Tax limitation.

Mr. GRAHAM. Mr. President, today I join my colleague Senator CHAFEE in support of the Historic Homeownership Assistance Act. This bill would spur growth and preservation of historic neighborhoods across the country by providing a limited tax credit for qualified rehabilitation expenditures to historic homes.

An understanding of the history of the United States serves as one of the cornerstones supporting this great nation. We find American history reflected not only in books, films, and stories, but also in physical structures, including schools, churches, county courthouses, mills, factories, and personal residences.

The bill that Senator CHAFEE and I are cosponsoring focuses on the preservation of historic residences. The bill will assist Americans who want to safeguard, maintain, and reside in these homes which chronicle America's past.

The Historic Homeownership Assistance Act will stimulate rehabilitation of historic homes while contributing to the revitalization of urban communities. The Federal tax credit provided in the legislation is modeled after the existing Federal commercial historic rehabilitation tax credit. Since 1981, this commercial tax credit has facilitated the preservation of many historic structures across this great land. For example in the last two decades, in my home State of Florida, $238 million in private capital was invested in over 325 historic rehabilitation projects. These investments helped preserve Ybor City in Tampa and the Springfield Historic District in Jacksonville.

The tax credit, however, has never applied to personal residences. It is time to provide an incentive to individuals to restore and preserve homes in America's historic communities.

The Historic Homeownership Assistance Act targets Americans at all economic levels. The bill provides lower income Americans with the option to elect a Mortgage Credit Certificate in lieu of the tax credit. This certificate allows Americans who cannot take advantage of the tax credit to reduce the interest rate on their mortgage that secures the purchase and rehabilitation of a historic home.

For example, if a lower-income family were to purchase a $35,000 home which included $25,000 worth of qualified rehabilitation expenditures, it would be entitled to a $5,000 Historic Rehabilitation Mortgage Credit Certificate which could be used to reduce interest payments on the mortgage. This provision would enable families to obtain a home and preserve historic neighborhoods when they would be unable to do so otherwise.

Mr. President, the time has come for Congress to get serious about urban renewal. For too long, we have sat on the sidelines watching idly as our citizens slowly abandoned entire homes and neighborhoods in urban settings, leaving cities like Miami in Florida and others around the nation in financial jeopardy. For example, according to U.S. Census data, in the decade from 1980 to 1990, Chicago lost 41,000 housing units, Philadelphia 10,000, and St. Louis 7,000. The erosion of a sense of community and culture once shared by our urban neighborhoods and towns further magnifies the loss.

By addressing years of neglect and a general decline in investment in our older neighborhoods, this bill will empower families and individuals with the financial incentives needed to revitalize historic housing in our urban communities.

Recognizing that the States can best administer laws affecting unique communities, the act gives power to the

Secretary of the Interior to work with states to implement a number of the provisions.

The Historic Homeownership Assistance Act does not, however, reflect an untried proposal. In addition to the existing commercial historic rehabilitation credit, the proposed bill incorporates features from several state tax incentives for the preservation of historic homes. Colorado, Maryland, New Mexico, Rhode Island, Wisconsin, and Utah have pioneered their own successful versions of a historic preservation tax incentive for homeownership.

At the Federal level, this legislation would promote historic home preservation nationwide, allowing future generations of Americans to visit and reside in homes that tell the unique history of our communities. The Historic Homeownership Assistance Act will offer enormous potential for saving historic homes and bringing entire neighborhoods back to life.

I urge my colleagues to support this bill for the preservation of history.

By Mr. COVERDELL (for himself and Mr. FAIRCLOTH):

S. 497. A bill to amend the National Labor Relations Act and the Railway Labor Act to repeal the provisions of the Acts that require employees to pay union dues or fees as a condition of employment; to the Committee on Labor and Human Resources.

THE NATIONAL RIGHT TO WORK ACT OF 1997

Mr. COVERDELL. Mr. President, I am pleased to introduce the Coverdell-Faircloth National Right to Work Act of 1997. As many of you know, my esteemed colleague from North Carolina, Senator LAUCH FAIRCLOTH, introduced this language last Congress and I commend Senator FAIRCLOTH for his outstanding leadership on this issue.

This bill does not add a single word to Federal law. Rather, it would repeal those sections of the National Labor Relations Act and Railway Labor Act that authorize the imposition of forced-dues contracts on working Americans. I believe that every worker must have the right to join or support a labor union. This bill protects that right. But no worker should ever be forced to join a union.

I am happy to say that my own state, Georgia, is among one of the 21 states that is a ''Right to Work'' state and has been since 1947. According to U.S. News and World Report, 7 of the strongest 10 State economies in the nation have Right to Work laws. Workers who have the freedom to choose whether or not to join a union have a higher standard of living than their counterparts in non-Right to Work States. According to Dr. James Bennett, an economist with the highly respected economics department at George Mason University, on average, urban families in Right to Work States have approximately $2,852 more annual purchasing power than urban families in non-Right to Work States when the lower taxes, housing and food costs of Right to Work States are taken into consideration.

According to a poll by the respected Marketing Research Institute, 77 percent of Americans support Right to Work, and over 50 percent of union households believe workers should have the right to choose whether or not to join or pay dues to a labor union. That should be no surprise. Because what this is all about is freedom. And right to work expands every working American's personal freedom.

Mr. President, I urge my colleagues to support this legislation that expands the freedom of hard working Americans and gives them the freedom to choose whether to accept or reject union representation and union dues without facing coercion, violence, and work-place harassment by union officials.

Mr. FAIRCLOTH. Mr. President, today I join with my good friend, Senator COVERDELL to introduce the National Right to Work Act of 1997. This is the same legislation that I introduced during the 104th Congress, and I am delighted to have Senator COVERDELL as a partner in this effort during the 105th Congress.

As I have said before, and continue to believe strongly, compulsory unionism violates the fundamental principle of individual liberty—the very principle upon which this Nation was founded. Compulsory unionism basically says that workers cannot and should not decide for themselves what is in their best interest. I can think of nothing more offensive to the core American principles of liberty and freedom.

The National Right to Work Act will address this most fundamental problem of federal labor policy: does America believe that working men and women should be forced, as a condition of employment, to pay dues or fees to a labor union? I believe, as does my colleague, Senator COVERDELL and many others, that no one should be forced to pay union dues just to get or keep a job.

The National Right to Work Act would not change a single word of Federal law. Rather, the measure would repeal those sections of the National Labor Relations Act and Railway Labor Act that authorize the imposition of forced-dues contracts on working Americans. I believe that every worker must have the right to join or support a labor union. This bill protects that right. However, no worker should be forced to join a union.

In 1965, Senator Everett Dirksen said of compulsory unionism, ''Is there a more fundamental right than to make a living for one's family without being compelled to join a labor organization?'' I could not agree more.

Mr. President, again let me say that I am pleased to introduce today with Senator COVERDELL the National Right to Work Act of 1977.

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

S. 498. A bill to amend the Internal Revenue Code of 1986 to allow an employee to elect to receive taxable cash compensation on lieu of nontaxable parking benefits, and for other purposes; to the Committee on Finance.

THE COMMUTER CHOICE ACT OF 1997

Mr. CHAFEE. Mr. President, one of the greatest challenges facing metropolitan areas in our Nation is finding a way to reduce traffic congestion. Commuters in cities across the country spend countless hours on the road traveling to and from work. This traffic places tremendous pressure on our highway infrastructure and causes monumental environmental problems. More than 100 cities fail to meet today's clean air standards. The best way to clean up our air is to reduce the number of automobiles which are driven on a daily basis.

Unfortunately, our current tax laws actually encourage commuters to travel to work in single occupant automobiles. Today, employers can provide parking to their employees as a tax-free fringe benefit. As part of the Energy Policy Act of 1992, the value of parking that qualifies for this benefit is limited to $170 per month. By comparison, tax-free transit or van-pool benefits are limited to only $65 per month.

There is another aspect of this benefit that makes the tax-free parking an even greater incentive for employees to drive to work. The fringe benefit must be offered by employers on a take-it-or-leave-it basis. In other words, the employee has the option of accepting the employer-paid parking or nothing at all. The tax-exempt status of the employer-provided parking is lost if employees are offered a choice between the parking fringe benefit and taxable salary.

Let me illustrate the problem this creates. Suppose an employer has two employees, Sally and Jim. Under current law, the employer can pay for a parking space at a garage next door. This fringe benefit will not be taxable to Sally and Jim so long as the cost does not exceed $170 per month. But, let's assume that Sally would prefer to receive cash instead of a parking space, because she can commute to work with her husband or take public transportation. The way the law is currently written, Sally's employer cannot offer her cash instead of the parking fringe benefit, because it would cause Jim's parking fringe benefit to become taxable.

The Commuter Choice Act of 1997, which I am introducing today along with my colleague Senator MOYNIHAN, corrects this bias in the Tax Code by allowing employers to offer their employees the choice of tax-free parking or taxable cash compensation. This proposal is completely voluntary. Employers are not required to offer cash in lieu of parking. Furthermore, it has absolutely no affect on employees wishing to continue receiving tax-free parking. That fringe benefit would remain exempt from income and payroll taxes. However, my proposal would

allow employees not interested in the parking fringe benefit to opt instead for taxable cash compensation.

Intuitively, I believe Voluntary Cash Out will have positive revenue consequences for the Federal Government. Some individuals who currently receive tax-free parking will instead opt for taxable cash compensation. For example, trading in a parking space in many cities could be worth almost $2,000 in pretax salary annually, a powerful incentive to consider alternative ways of getting to work. An overwhelming majority of employees receive tax-free parking from their employers—95 percent who drive to work, according to the National Personal Transportation Survey. So, even if only a small portion of this population chooses the taxable cash it should lead to a substantial revenue windfall.

In 1992, the State of California enacted legislation that required employers with 50 or more employees to offer cash in lieu of parking if the employer subsidized commuter parking. A recent study of eight employers who complied with this law provides some evidence of how businesses and their employees might react to Commuter Choice. For the nearly 1,700 employees of the eight firms, the solo driver share fell from 76 to 63 percent; to carpool share increased from 14 to 23 percent. More importantly, because many employees voluntarily chose taxable cash over tax-exempt parking, State and Federal income tax revenues increased by $56 per employee per year.

Finally, employer interest in programs like Commuter Choice will increase as pressure builds to reduce traffic congestion and air pollution in our Nation's cities. Many urban areas that are in nonattainment for national air quality standards have incorporated employee commute option programs as part of their State implementation plans. These programs are hampered, however, by the current tax rules, which prohibit employees from trading in tax-free parking for cash and utilizing alternative commute options. The Commuter Choice Act removes that prohibition.

I encourage my colleagues to cosponsor this legislation, which offers greater flexibility to employers and employees, and which will have a substantial positive effect on our air quality.

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. 498

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 ''Commuter Choice Act of 1997''.

SEC. 2. ELECTION TO RECEIVE TAXABLE CASH COMPENSATION IN LIEU OF NONTAXABLE PARKING BENEFITS.

(a) IN GENERAL.—Section 132(f)(4) of the Internal Revenue Code of 1986 (relating to benefits not in lieu of compensation) is amended by adding at the end the following new sentence: ''This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to qualified parking provided after December 31, 1997.

By Mr. CHAFEE (for himself, Mr. BAUCUS, and Mr. GREGG):

S. 499. A bill to amend the Internal Revenue Code of 1986 to provide an election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules; to the Committee on Finance.

THE AMERICAN FARM AND RANCH PROTECTION ACT OF 1997

Mr. CHAFEE. Mr. President, a serious environmental problem facing the country today is the loss of open space to development. All across the country, farms, ranches, forests, and wetlands are forced to give way to the pressures for new office buildings, shopping malls, and housing developments.

America is losing over 4 square miles of land to development every day. In Rhode Island, over 11 thousand acres of farmland have been lost to development since 1974. In many instances, this is simply the natural outgrowth of urbanization of our society. Other times it is the direct result of improper planning at the State and local levels.

But frequently, the pressure comes from the need to raise funds to pay estate taxes. For those families where undeveloped land represents a significant portion of the estate's total value, the need to pay the tax creates powerful pressure to develop or sell off part or all of the land or to liquidate the timber resources of the land. Because land is appraised by the Internal Revenue Service according to its highest and best use, and such use is often its development value, the effect of the tax is to make retention of undeveloped land impossible.

In addition, our current estate tax policy results in complicated valuation disputes between the donor's estate and the Internal Revenue Service. In many cases, the additional costs incurred as a result of these disagreements cause a potential donor of a conservation easement to decide not to make the contribution.

These open spaces improve the quality of life for Americans throughout this great Nation and provide important habitat for fish and wildlife. The question is how do we conserve our most valuable resource during this time of significant budget constraints.

Mr. President, I think we need to restructure the Nation's estate tax laws to remove the disincentive for private property owners to conserve environmentally significant land. The American Farm and Ranch Protection Act, which I am introducing today along with Senators BAUCUS and GREGG, will help to achieve this goal by providing an exemption from the estate tax for the value of land that is subject to a qualified, permanent conservation easement.

This bill is similar to legislation that we introduced during the 104th Congress and was included in the Balanced Budget Act of 1995. It excludes land subject to a conservation easement from the estate and gift taxes. Development rights retained by the family—most frequently the ability to use the property for a commercial purpose—remain subject to the estate tax.

In order to target the incentives under this bill to those areas that are truly at risk for development, the bill is limited to land that falls within a 50-mile radius of a metropolitan area, a national park or a national wilderness area, or an urban national forest.

Conservation easements, which are entirely voluntary, are agreements negotiated by landowners in which a restriction upon the future use of land is imposed in order to conserve those aspects of the land that are publicly significant. To qualify for the estate tax exemption under this bill, such easements must be perpetual and must be made to preserve open space, to protect the natural habitat of fish, wildlife, or plants, to meet a governmental conservation policy, or to preserve a historically important land area.

I urge my colleagues to join me in this effort to save environmentally sensitive open spaces.

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. 499

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 ''American Farm and Ranch Protection Act of 1997''.

SEC. 2. TREATMENT OF LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.

(a) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—Section 2031 of the Internal Revenue Code of 1986 (relating to the definition of gross estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—

''(1) IN GENERAL.—If the executor makes the election described in paragraph (4), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the value of land subject to a qualified conservation easement.

''(2) TREATMENT OF CERTAIN INDEBTEDNESS.—

''(A) IN GENERAL.—The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) DEBT-FINANCED PROPERTY.—The term 'debt-financed property' means any property

with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

''(ii) ACQUISITION INDEBTEDNESS.—The term 'acquisition indebtedness' means, with respect to debt-financed property, the unpaid amount of—

''(I) the indebtedness incurred by the donor in acquiring such property,

''(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition.

''(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, except that indebtedness incurred after the acquisition of such property is not acquisition indebtedness if incurred to carry on activities directly related to farming, ranching, forestry, horticulture, or viticulture, and

''(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

''(3) TREATMENT OF RETAINED DEVELOPMENT RIGHT.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

''(B) TERMINATION OF RETAINED DEVELOPMENT RIGHT.—If every person in being who has an interest (whether or not in possession) in such land shall execute an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

''(C) ADDITIONAL TAX.—Failure to implement the agreement described in subparagraph (B) within 2 years of the decedent's death shall result in the imposition of an additional tax in the amount of tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following the end of the 2-year period.

''(D) DEVELOPMENT RIGHT DEFINED.—For purposes of this paragraph, the term 'development right' means the right to establish or use any structure and the land immediately surrounding it for sale (other than the sale of the structure as part of a sale of the entire tract of land subject to the qualified conservation easement), or other commercial purpose which is not subordinate to and directly supportive of the activity of farming, forestry, ranching, horticulture, or viticulture conducted on land subject to the qualified conservation easement in which such right is retained.

''(4) ELECTION.—The election under this subsection shall be made on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable.

''(5) CALCULATION OF ESTATE TAX DUE.—An executor making the election described in paragraph (4) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (3)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—The term 'land subject to a qualified conservation easement' means land—

''(i) which is located in or within 50 miles of an area which, on the date of the decedent's death—

''(I) is a metropolitan area (as defined by the Office of Management and Budget),

''(II) is a National Park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 50 miles of such a park or wilderness area is not under significant development pressure), or

''(III) is an Urban National Forest (as designated by the Forest Service),

''(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

''(iii) with respect to which a qualified conservation easement is or has been made by the decedent or a member of the decedent's family.

''(B) QUALIFIED CONSERVATION EASEMENT.—The term 'qualified conservation easement' means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that for this purpose the term 'qualified real property interest' shall not include any structure or building constituting 'a certified historic structure' as defined in section 170(h)(4)(B), and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on commercial recreational activity, except that the leasing of fishing and hunting rights shall not be considered commercial recreational activity when such leasing is subordinate to the activities of farming, ranching, forestry, horticulture or viticulture.

''(C) MEMBER OF FAMILY.—The term 'member of the decedent's family' means any member of the family (as defined in section 2032A(e)(2)) of the decedent.''

''(7) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The Secretary shall prescribe regulations applying this section to an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)).''

(b) CARRYOVER BASIS.—Section 1014(a) of such Code (relating to basis of property acquired from a decedent) is amended by striking the period at the end of paragraph (3) and inserting '', or'' and by adding after paragraph (3) the following new paragraph:

''(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1996.

SEC. 3. GIFT TAX ON LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.

(a) GIFT TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—Section 2503 of the Internal Revenue Code of 1986 (relating to taxable gifts) is amended by adding at the end the following new subsection:

''(h) GIFT TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—The transfer by gift of land subject to a qualified conservation easement shall not be treated as a transfer of property by gift for purposes of this chapter. For purposes of this subsection, the term 'land subject to a qualified conservation easement' has the meaning given to such term by section 2031(c); except that references to the decedent shall be treated as references to the donor and references to the date of the decedent's death shall be treated as references to the date of the transfer by the donor.''

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

SEC. 4. QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.

(a) QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.—Subsection (c) of section 2032A of the Internal Revenue Code of 1986 (relating to alternative valuation method) is amended by adding at the end the following new paragraphs:

''(8) QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.—A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

''(9) EXCEPTION FOR REAL PROPERTY IS LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—If qualified real property is land subject to a qualified conservation easement (as defined in section 2031(c)), the preceding paragraphs of this subsection shall not apply.''

(b) LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT IS NOT DISQUALIFIED.—Subsection (b) of section 2032A of such Code (relating to alternative valuation method) is amended by adding at the end the following paragraph:

''(E) If property is otherwise qualified real property, the fact that it is land subject to a qualified conservation easement (as defined in section 2031(c)) shall not disqualify it under this section.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contributions made, and easements granted, after December 31, 1996.

SEC. 5. QUALIFIED CONSERVATION CONTRIBUTION WHERE SURFACE AND MINERAL RIGHTS ARE SEPARATED.

(a) IN GENERAL.—Section 170(h)(5)(B)(ii) of the Internal Revenue Code of 1986 (relating to special rule) is amended to read as follows:

''(ii) SPECIAL RULE.—With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to contributions made after December 31, 1992, in taxable years ending after such date.

SUMMARY OF THE AMERICAN FARM AND RANCH PROTECTION ACT OF 1997

The American Farm and Ranch Protection Act protects family lands and encourages the voluntary conservation of farmland, ranches, forest land, wetlands, wildlife habitat, open space and other environmentally sensitive property. It enables farmers and ranchers to continue to own and work their land by eliminating the estate and gift tax burden that threatens the current generation of owners. The bill does this in the following ways:

By excluding from estate and gift taxes the value of land on which a qualified conservation easement has been granted if the land is located in or within a 50-mile radius of a metropolitan area, a National Park, or a wilderness area that is part of the National Wilderness Area System, or an Urban National Forest; and,

By clarifying that land subject to a qualified conservation easement can also qualify for special use valuation under Code section 2032A.

The bill also contains a number of safeguards to ensure that the benefits of the exclusion are not abused. These safeguards include the following:

The easement must be perpetual and meet the requirements of Code Section 170(h), governing deductions for charitable contributions of easements;

Easements retaining the right to develop the property for commercial recreational use would not be eligible, while other retained development rights would be taxed;

Land excluded from the estate tax would receive a carryover, rather than stepped-up, basis for purposes of calculating gain on a subsequent sale;

The land must have been owned by the decedent or a member of the decedent's family for at least three years immediately prior to the decedent's death; and,

The easement must have been donated by the decedent or a member of the decedent's family.

Under Section 170(h) easements will qualify only if they are made to a federal, state or local governmental unit or certain nonprofit groups. In addition, they must be made: To preserve land areas for outdoor recreation by the general public; to protect the natural habitat of fish, wildlife, or plants; or, to preserve open space (including farmland and forest land).

The bill is effective for decedents dying, or gifts made, after December 31, 1996.

Mr. BAUCUS. Mr. President, I am very pleased to join my colleague Senator CHAFEE in introducing the American Farm and Ranch Protection Act today. This bill represents a bipartisan effort to help protect the open lands of our great country.

Montana is know as Big Sky country for a reason, our expansive open areas dedicated to farming, ranching, and forestry rather than building and development. Our open lands represent a way of life in Montana, they are part of our environmental and cultural heritage. And they are rapidly disappearing as ranches and farms make way for houses and building complexes.

America is losing over 4 square miles of land to development every day. In Montana alone, since 1987 over 560,000 acres of farmland have been taken out of farm use. Since 1974 the number of acres of land taken our of farm use exceeds 2.5 million.

Frequently, the pressure to abandon the farm use of land comes from the need to raise funds to pay estate taxes. For those families where undeveloped land represents a significant portion of the estate's total value, often the heirs must develop or sell off part or all of the land merely in order to pay the tax. Because land is typically appraised by the Internal Revenue Service according to its highest and best use, which usually assumes development on the property, retention of undeveloped land is very difficult.

I have attempted to resolve this problem through changes in the estate tax itself by my sponsorship of the bipartisan Estate Tax Relief for the American Family Act of 1997. That bill will make it easier for all family-owned businesses, including farms and ranches, to be passed on to succeeding generations. At the same time, however, I believe it is important to provide an incentive for the permanent preservation of environmentally significant land, so that our legacy to our children will include Montana's open lands. The American Farm and Ranch Protection Act, which Senator CHAFEE and I are introducing today, will help to achieve this goal by providing an exemption from the estate tax for the value of land that is subject to a qualified, permanent conservation easement.

Conservation easements, which are entirely voluntary, are agreements negotiated by landowners in which a restriction upon the future use of land is imposed in order to conserve those aspects of the land that are publicly significant. To qualify for the estate tax exemption under this bill, the easements must be perpetual and must be made to preserve open space, to protect the natural habitat of fish, wildlife or plants, to meet a government conservation policy, or to preserve a important historical heritage area.

Title 5 of this bill represents an effort to clarify an area of the law that is of particular importance in Montana. Under current law, when mineral rights have been severed from the surface rights in a piece of property, and a qualified conservation easement is created by the owner of the surface rights for the benefit of a nonprofit entity, that owner is unable to take a charitable deduction unless two conditions are met: the probability of surface mining occurring on the property must be so remote as to be negligible, and the severance of the mineral rights must have occurred before June 13, 1976. In Montana, severance of mineral rights for many properties occurred many generations earlier, and they have often been disbursed to farflung relatives in very small portions. So the probability that mining will occur is, indeed, very remote. The Internal Revenue Service, however, has asserted that some uncertainty exists about the congressional intent behind the term ''ownership of the surface estate and mineral interest first separated after June 12, 1976.''

I was the original authority of the language in question, and I have communicated with the IRS regarding my intention when the language was drafted. However, IRS has been unwilling to issue a favorable letter ruling which would clarify this issue, and as a consequence, it is impossible for many Western landowners to make voluntary charitable contributions of conservation easements in order to protect important Western land. In light of the confusion that this date has caused, and because it has no policy justification, our legislation would eliminate the 1976 date from the statute.

I believe this bill can be an important tool for America's farm and ranch families to utilize in preserving their homesteads. At the same time, it makes a significant contribution to the larger public good of conserving America's increasingly threatened rural lands. I urge my colleagues to join on the bill as cosponsors, and encourage the administration to support the legislation.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 500. A bill to authorize emergency appropriations for cleanup and repair of damages to facilities of Yosemite National Park and other California national parks caused by heavy rains and flooding in December 1996 and January 1997, and for other purposes; to the Committee on Energy and Natural Resources.

THE YOSEMITE EMERGENCY RESTORATION AND CONSTRUCTION ACT

Mrs. BOXER. Mr. President, I am today introducing a bill that will authorize emergency appropriations for cleanup and repair of damages to facilities of Yosemite National Park and other National Park Service areas in California caused by heavy rains and flooding in December 1996 and January 1997.

I expect most of the issues regarding emergency cleanup and repair due to floods in California to be addressed through the appropriations process. I do not therefore expect this bill to be taken up by the appropriate Senate committee and passed by the Senate. The primary purpose of introducing this bill is to set a benchmark for recovery and cleanup efforts at Yosemite National Park.

My bill takes several steps beyond the bill that was introduced last month by Congressman DOOLITTLE and RADANOVICH:

First, it authorizes emergency funding. Second, it authorizes a specific amount—$200 million in emergency funds in fiscal year 1997. Third, it specifies that funds shall only be spent in a manner that is consistent with the Yosemite general management plan, the concession services plan, and when adopted, the Yosemite Valley housing plan, and the valley implementation plan. Fourth, it specifies that funds spent on repair and rebuilding of concessions facilities shall be recovered by the Secretary of the Interior to the greatest extent practicable according to the Department of the Interior's contract with the concessioner. Fifth, it authorizes emergency grants to satellite communities around Yosemite to provide mass transit visitor transportation into the park during repair and restoration activities on access roads. Sixth, it authorizes emergency appropriations for other California parks that suffered flood damage including Redwood National Park, Sequoia-Kings Canyon National Park, and others. Seventh, it authorizes $7 million to be appropriated in fiscal year 1998 and such sums as may be necessary for each fiscal year thereafter for a mass transit system for Yosemite.

Mr. President, the primary goal of the emergency restoration and construction activities authorized in this bill is to reopen Yosemite National

Park and restore services to Park visitors as quickly and safely as possible.

The importance of emergency funding for Yosemite cannot be overstated. It is a unique national treasure, recognized all over the world for its spectacular natural beauty. Over 1.4 million people visit the park every year including tens of thousands of international visitors who travel to California for the sole purpose of staying in the park to experience nature. John Muir—one of our nation's founding leaders of environmental conservation—first encountered the majestic Yosemite Valley in 1864 and immediately realized the importance of preserving its natural wonders. Muir's foresight and passion resulted in the establishment of Yosemite National Park in October 1890. At its onset, the park included 60,000 acres miles of scenic wild lands. Today, some 106 years later, the park embraces over 761,236 acres of granite peaks, broad meadows, glacially carved domes, giant sequoias, secluded tarns, and breathtaking waterfalls.

This winter, tropical storms with heavy rain caused serious flooding in the park. Yosemite's major rivers and tributaries flooded many park areas and caused severe damage to infrastructure. Over 350 damage assessments have been completed by engineers, architects, resource specialists, and other technical experts. Their first damage assessment report shows serious damage to the four main routes leading into the park, major electrical and sewer systems, 224 units of employee housing, over 500 guest lodging units, over 350 campsites, 17 restoration projects, and over 10 archeological sites.

According to the National Park Service, full recovery will take years. We now begin the recovery period during which, interim solutions will be put in place such as temporary housing and lodging while permanent construction is being completed.

The Yosemite Emergency Restoration and Reconstruction Act would authorize $200 million in emergency funds to be appropriated to the Secretary of Interior for cleanup and repair of flood damages to the facilities of Yosemite National Park caused by heavy rains and flooding in December 1996 and January 1997, and other national parks in the State of California. The funds are authorized to remain available until expended.

The authorization requires that any emergency funds spent at Yosemite be consistent with the Yosemite General Management Plan, the Concession Services Plan, and when adopted, the Yosemite Valley Housing Plan, and the Valley Implementation Plan.

Funds are authorized to be spent on repair, restoration, and relocation, where appropriate, of infrastructure vital to Yosemite National Park operations, including but not limited to roads, trails, utilities, buildings, grounds—including campgrounds—natural resources, cultural resources, and lost and damaged property, both within the park boundaries and at the El Portal administrative site servicing the park.

Also, funds are authorized to repair and relocation of park employee housing and the Resource Management Office; repair, maintenance, and opening of Tioga Pass Road within the boundaries of the park; and repair and expeditious opening of highways 120, 140, and 41 within the boundaries of the park.

The bill requires that funds spent on repair and relocation of concession-operated rental cabins, motel rooms, rental structures, and concession employee housing and facilities be recovered by the Department of the Interior to the greatest extent practicable, within the provisions of the concession contract between the Department of the Interior and the Yosemite Concession Services.

Mr. President, a key aspect to the bill is the authorization of $2.5 million in emergency grants to satellite communities around Yosemite National Park for the purpose of providing mass transit visitor transportation into the park during repair and restoration activities on access roads to the park.

Other California parks suffered flood damage. My bill would authorize emergency funds for Redwood National Park, Sequoia-Kings Canyon National Park, Lassen Volcanic National Park, Whiskeytown National Recreation Area, Devils Postpile National Monument, and Lava Beds National Monument.

Last, Mr. President, my bill authorizes $7 million to be appropriated in fiscal year 1998 and such sums as may be necessary for each fiscal year thereafter to the Secretary of Interior for the purpose of helping establish a mass transit system for Yosemite National Park—specifically for the purchase of electric buses and alternative-fueled buses.

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. 500

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 ''Yosemite Emergency Restoration and Construction Act of 1997''.

SEC. 2. AUTHORIZATION OF EMERGENCY APPROPRIATIONS FOR CLEANUP AND REPAIR OF YOSEMITE NATIONAL PARK.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $200,000,000 for fiscal year 1997, to remain available until expended.

(b) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary of the Interior (referred to in this Act as the ''Secretary'') shall use amounts made available under subsection (a) for cleanup and repair of flood damage to the facilities of Yosemite National Park and other national parks in the State of California caused by heavy rains and flooding in December 1996 and January 1997.

(2) INCLUDED ACTIVITIES.—Activities by the Secretary under paragraph (1) shall include—

(A) repair, restoration, and, if appropriate, relocation of infrastructure vital to operations at Yosemite National Park, including roads, trails, utilities, buildings, grounds (including campgrounds), natural resources, cultural resources, and lost and damaged property in the park and at the El Portal administrative site servicing the park;

(B) repair and, if appropriate, relocation of Yosemite National Park employee housing and the Resource Management Office;

(C) repair and, if appropriate, relocation of concession-operated rental cabins, motel rooms, rental structures, and concession employee housing and facilities;

(D) repair, maintenance, and opening of Tioga Pass Road in Yosemite National Park;

(E) repair and expeditious opening of Highways 120, 140, and 41 in Yosemite National Park;

(F) any other repair and restoration that is necessary for the expeditious and complete opening of Yosemite National Park;

(G) making emergency grants to satellite communities around Yosemite National Park to provide mass transit visitor transportation into the park during repair and restoration activities on access roads to the park; and

(H) repair and restoration of damage caused by heavy rains and flooding in December 1996 and January 1997 at Redwood National Park, Sequoia-Kings Canyon National Park, Lassen Volcanic National Park, Whiskeytown National Recreation Area, Devils Postpile National Monument, and Lava Beds National Monument.

SEC. 3. EMERGENCY FUNDING FOR YOSEMITE SATELLITE COMMUNITIES.

Of any amounts made available under section 2(a), the Secretary shall make available not less than $2,500,000 to make grants described in section 2(b)(2)(G).

SEC. 4. CAPITAL RECOVERY FROM CONCESSIONAIRES.

To the extent practicable under the concession contract between the Secretary and Yosemite Concession Services, the Secretary shall recover from Yosemite Concession Services any amount used under section 2(b)(2)(C).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR MASS TRANSIT SYSTEM FOR YOSEMITE NATIONAL PARK.

(a) AUTHORIZATION.—There are authorized to be appropriated to carry out this section $7,000,000 for fiscal year 1998 and such sums as are necessary for each fiscal year thereafter.

(b) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary shall use amounts made available under subsection (a) to establish a mass transit system at Yosemite National Park.

(2) INCLUDED ACTIVITIES.—Activities by the Secretary under paragraph (1) shall include—

(A) using not more than $1,500,000 for the purchase of electric buses; and

(B) using not more than $5,500,000 for the purchase of alternative-fueled buses.

SEC. 6. CONSISTENCY WITH PLANS.

Activities at Yosemite National Park by the Secretary under this Act shall be consistent with the Yosemite General Management Plan, the Concession Services Plan, the Yosemite Valley Housing Plan, and the Valley Implementation Plan.

By Mr. MACK (for himself, Mr. SHELBY, Mr. COCHRAN, Mr. D'AMATO, and Mr. HAGEL):

S. 501. A bill to amend the Internal Revenue Code of 1986 to provide all taxpayers with a 50-percent deduction for capital gains, to increase the exclusion for gain on qualified small business stock, to index the basis of certain capital assets, to allow the capital loss deduction for losses on the sale or exchange of an individual's principal residence, and for other purposes; to the Committee on Finance.

THE RETURN CAPITAL TO THE AMERICAN PEOPLE ACT

Mr. MACK. Mr. President, today I am introducing legislation, along with Senator SHELBY, which provides real cuts in the capital gains rate and indexes capital gains to account for inflation. As we work to achieve a balanced budget, it is our belief that a real reduction in the capital gains rate is essential to ensure greater growth, innovation, and prosperity. Accordingly, the legislation we have proposed offers the best elements of existing capital gains proposals.

Perhaps most importantly, this proposal ensures that homeowners, family farms, and small businesses are not penalized for inflationary—phantom—gains by providing for the indexation of capital gains. The importance of indexation is made clear in the accompanying report recently prepared by the Joint Economic Committee.

Additionally, our bill will offer a 50-percent rate reduction for individuals and corporations, and allow the deduction for a loss on the sale of a principal residence.

Finally, this legislation encourages investment in small businesses by increasing the exclusion from gains for small business stock from 50 to 75 percent; reducing the requirement for holding stock from 5 to 3 years; increasing the eligibility size to $100 million, and providing a 60-day grace period for the rollover of stock between small businesses.

Again, I want to restate the importance of a reduced capital gains rate, which benefits all Americans by stimulating economic growth and prosperity and leading to innovation in biomedical research and other life-enhancing technologies. I look forward to my colleagues joining me in this effort to ensure that a real capital gains rate reduction is included in any balanced budget package the Congress puts together in the coming months.

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:

INDEXING CAPITAL GAINS

(Prepared by Robert Stein)

The case for cutting the capital gains tax is simple and straightforward: It is a win-win situation for all involved—for taxpayers, workers and government revenue.

Everyone who invests would get more bang for their buck. This includes people who start small businesses, workers who have pension money in stocks and those who save for life's goals, like a downpayment on a home, a college education or retirement. More than 40% percent of families own stocks, either directly or indirectly, including more than 25% of the families making between $10,000 and $25,000 per year.[1] And contrary to conventional wisdom, cutting the capital gains tax will increase government revenue, making it easier to balance the budget.

One way to cut the capital gains tax is to limit the tax to real increases in the prices of assets, over and above inflation. This is called indexing. Without indexing, effective tax rates can be much higher than the government's official rate. Consider a couple that buys $10,000 worth of stocks in 1966, to help pay for their retirement. In 1996, they would have about $79,000 worth of stocks.[2] Cashing-in these stocks could require a tax of about $19,000.[3] But much of their gain—the difference between their initial investment and the $79,000 they end up with—was due to inflation, not real increases in purchasing power. In fact, the couple only had about $30,000 in real gains, over and above inflation.[4] And a tax of $19,000 or $30,000 in gains is an effective tax rate of 63%.

Chart 1 shows a history of the difference between the top official tax rate on capital gains and the top effective tax rate, taking inflation into account.[5] As Chart 1 shows, the effective tax rate on capital gains can greatly exceed the official rate, even going well above 100%. In fact, if an investor sells an asset that increased in price, but which didn't keep pace with inflation, she would have to pay taxes without enjoying any real gain at all! It doesn't take much of an imagination to see how the fear of such taxes could deter investment.

(Chart not reproductible in RECORD.)

Would cutting taxes on capital gains reduce government revenue, making it tougher to balance the budget? Certainly not. In fact, cutting the effective tax rate on capital gains should boost revenue. As the following table shows, government revenue from the capital gains tax has grown much more quickly when the effective tax rate has been low or falling than when it's been high or rising.

FIVE PHASES OF THE CAPITAL GAINS TAX

Years	Effective tax rates (in percent)	Capital gains revenue[6] (percent per year)
1954–1967 ..	Low (30 to 40)	+10
1968–1980 ..	Rising/Very High (37 to 126)	+2
1981–1986 ..	Falling (97 to 39)	[7]+10
1987–1991 ..	Rising (39 to 61)	[8]−5
1992–1994 ..	Falling (61 to 50)	+10

Put simply, reducing the effective tax rate on capital gains would kill two birds with one stone: It would both ease the tax burden and make it easier to balance the budget. Case in point: The last time the government cut the official tax rate on capital gains, revenue from the capital gains tax rose from $22 billion to $36 billion in only five years.[9]

QUESTIONS AND ANSWERS

Q: Wouldn't indexation complicate the tax code, as taxpayers would have to keep track of not only the cost of their assets but also the inflation adjustment for each?

A: No. People would have the option of indexing, but could still use the non-indexed cost of their assets when figuring out the amount of their gains. This would mostly happen when inflation was low and the asset wasn't held very long.

Q: If we index capital gains for inflation, don't we have to index debts too? And since it's too difficult to index debts for tax purposes, shouldn't we leave the system the way it is?

A: No. This argument confuses key differences between equity and debt. Theoretically, the tax code could let lenders index their interest income, so they only have to pay taxes on the interest they earn over and above inflation. But for every $1 that lenders reduce their taxable income, borrowers would have to reduce the amount of interest they deduct. Overall, debt transactions would still feel the same tax bite. Only the distribution of the taxes would change: Lenders would pay less; borrowers would pay more. But lenders and borrowers already apportion the tax burden between themselves. It's factored into the interest rate. This interest rate also reflects the inflation the two parties expect, as well as the risk that inflation will differ in either party's favor.

By contrast, bargaining over tax costs doesn't happen with equity. Unlike with debts, nobody deducts capital gains as a cost. Indexing gains would not simply shift the tax burden from one party to another. It would reduce the total tax burden placed on investments in equity, to reflect the erosion of capital gains by inflation.

ENDNOTES

[1] Family Finances in the U.S.: Recent Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin, January 1997. Indirect stock ownership includes owned through mutual funds or retirement accounts.

[2] Between 1966 and 1996 the Standard and Poor's 500 stock index rose from 85.26 to 670.81.

[3] Twenty-eight percent of the capital gain.

[4] The consumer price index for urban worker rose from 32.5 in 1966 to 157 in 1996. This makes the real basis about $48,000 in 1996.

[5] To calculate the effective capital gains tax rate I assumed people hold their assets for five years and use the consumer price index for urban workers as my price index. To avoid a result where people get taxed on zero or negative real gains (which implies a tax rate of infinity!) I assume people earned a 5% real return per year. This method has the added benefit of giving us a view of the expected capital gain tax rate, as almost all people invest with the expectation that they will get a positive return. The expected tax rate should drive investment decisions more than any other tax rate.

[6] Changes in real revenue, with nominal revenue figures adjusted by the consumer price index for urban workers.

[7] This annual rate of changes does not include the huge increase in government revenue in 1986, as people cashed in their gains to avoid an oncoming tax hike in 1987. In other words, as favorable as the data in the table looks for keeping capital gains taxes low, it could have made the table even more favorable, if 1986 were used as the end point. Instead, the increase in gains during this era of lower taxes is cut off in 1985, at a much lower point than the 1986 point.

[8] This calculation does not use the 1986 peak as the starting point. It uses 1985. Had it used 1986 as the starting point the data would have been even more favorable for keeping capital gains tax low.

[9] From 1980, the year before the tax cut, to 1985, the year before the huge surge in revenue that anticipated the hike in rates in 1986. Money figures are in constant 1994 dollars.

By Mr. GRASSLEY:

S. 502. A bill to amend title XIX of the Social Security Act to provide post-eligibility treatment of certain payments received under a Department of Veterans Affairs pension or compensation program; to the Committee on Finance.

STATE VETERANS' HOME LEGISLATION

Mr. GRASSLEY. Mr. President, today I am introducing legislation which, when enacted, will modify the treatment of certain veterans benefits received by veterans who reside in State veterans homes and whose care

[1] Footnotes at end of article.

and treatment is paid for by the Medicaid program. I am joined in introducing this bill by Senator GRAHAM.

Veterans residing in State veterans homes, who are eligible for aid and attendance [AA] and unusual medical expense [UME] benefits, veterans benefits provided under title 38 of the United States Code, who are also eligible for Medicaid, are the only veterans in nursing homes who receive, and who are able to keep, the entire AA and UME benefit amounts. This can be as much as $1,000 per month.

Other veterans, who reside in other types of nursing homes are receiving Medicaid, and who are also eligible for AA/UME can receive only 90 per month from the VA.

Yet, other veterans who reside in State veterans homes but who are not eligible for the AA/UME benefits must contribute all but $90 of their income to the cost of their care.

So, even though veterans residing in State veterans homes who are eligible for AA and UME benefits and who qualify for Medicaid have all of their treatment and living expense paid by the State Medicaid program, they nevertheless may keep as much as $1,000 per month of the AA and UME benefits.

It might be useful for me to review how this state of affairs came to be.

In 1990, legislation was enacted, Public Law 101–508, November 5, 1990, which modified title 38, the veterans benefits title of the United States Code, to stipulate that veterans with no dependents, on title XIX, residing in nursing homes, and eligible for AA and UME, could receive only a $90 per month personal expense allowance from the VA, rather than the full UME and AA amounts.

State veterans homes were subsequently exempted from the definition of nursing homes which had been contained in those earlier provisions of Public Law 101–508 by legislation enacted in 1991, Public Law 102–40, May 7, 1991.

The result was that veterans on title XIX and residing in State nursing homes continued to receive UME and AA. Until recently, the State veterans homes followed a policy of requiring that all but $90 per month of these allowances be used to defray the cost of care in the Home.

Then, a series of Federal court decisions held that neither UME nor AA could be considered income. The court decisions appeared to focus on the definition of income used in pre- and post-eligibility income determinations for Medicaid. The court decisions essentially held that UME and AA payments to veterans did not constitute income for the purpose of post-eligibility income determination. The reasoning was that, since these monies typically were used by veterans to defray the cost of certain series they were receiving, the payments constituted a ''wash'' for purposes of income gain by the veterans.

However, the frame of reference for the courts' decisions was not a nursing home environment in which a veteran receiving Medicaid benefits might find himself or herself. In other words, the UME and AA payment received by a veteran on Medicaid are provided to a veteran for services for which the State is already paying through the Medicaid program. The veteran is not paying for these services with their own income. So, as a consequence of the court decisions, these payments to the veteran in State veterans homes represent a net gain in income to the veteran; they are not paid out by the veteran to defray the cost of services the veteran is receiving.

VA does not pay AA or UME to veterans who are also on title XIX and residing in non-State veterans home nursing homes. Those veterans get only a $90 per month personal allowance.

And non-Medicaid eligible veterans who reside in State veterans homes must pay for services with their own funds. If they get UME and AA payments, the State veterans homes will take all but $90 of those sums to help defray the cost of the nursing home care.

Although the written record does not document this, I believe that the purpose of exempting the State veterans homes was to allow the Homes to continue to collect all but $90 of the UME and AA paid to the eligible veteran so as to enable State veterans homes to provide service to more veterans than they otherwise would be able to provide.

In any case, it seems highly unlikely that the purpose of exempting State veterans homes would have been to allow these veterans, and only these among similarly situated veterans, to retain the entire UME and A&A amounts.

The legislation I am introducing today modifies section 1902(r)(1) of the Social Security Act to stipulate that, for purposes of the post-eligibility treatment of income of individuals who are institutionalized, and on title 19, the payments received under a Department of Veterans Affairs pension or compensation program, including aid and attendance and unusual medical expense payments, may be taken into account.

By Mr. NICKLES:

S. 503. A bill to prevent the transmission of the human immunodeficiency virus (commonly known as HIV), and for other purposes; to the Committee on Labor and Human Resources.

THE HIV PREVENTION ACT OF 1997

Mr. NICKLES. Mr. President, I rise today to introduce the HIV Prevention Act of 1997. This legislation appropriately refocuses public health efforts on HIV prevention by using proven public health techniques designed for communicable diseases. The public health initiatives in this bill, which result in early detection of HIV infection, are now more important than ever in light of the tremendous advances that medical science has made.

This bill will balance the needs of HIV-infected patients with the prevention needs of those who are uninfected. The HIV Prevention Act of 1997 establishes a confidential, national HIV reporting effort as already exists for end stage HIV and AIDS; requires partner notification; mandates testing for indicted sexual offenders; protects health care patients and professionals from inadvertent exposure to HIV; provides access to insurance-required HIV test results; and allows adoptive parents to learn the HIV status of a child. In addition, this legislation includes Sense of the Senate language which expresses that the States should criminalize the intentional transmission of HIV; and also expresses the Sense of the Senate that strict confidentiality must be observed at all times in carrying out all of the provisions of the act.

The Senate is on record supporting the provisions of this bill in a 1990 amendment which was adopted by voice vote. The primary sponsors of the amendment were Senators KENNEDY and MIKULSKI. During debate on the amendment, Senator KENNEDY argued, ''In a case in which there is a clear and present danger, there is a duty to warn.'' That is the purpose of the HIV Prevention Act of 1997. The best ways to warn for the prevention of further spread of HIV and AIDS are reporting and partner notification, methods which are currently in use and proven to be effective.

This bill has received overwhelming support from groups including the Independent Women's Forum, Americans for a Sound AIDS/HIV Policy, the Family Research Council, Women Against Violence, the Christian Coalition, and the American Medical Association. I quote from a letter written by the AMA in support of this legislation:

''These public health initiatives which result in early detection of HIV infection are now more important because of the tremendous advances that medical science has made. Early intervention combined with effective treatments will enable those with HIV and AIDS to live longer, healthier lives.''

The HIV Prevention Act adds HIV to 52 other notifiable contagious diseases such as gonorrhea, hepatitis A, B, and C, syphilis, tuberculosis, and AIDS that must be reported to the Centers for Disease Control. In terms of partner notification, 26 states, including, I might add, Oklahoma, already require notification. It is time that these policies that are already in practice in some states are applied around the country in order to track and prevent further spread of HIV.

Mr. President, this legislation will greatly increase public health HIV prevention efforts that until now have focused only on AIDS. The HIV Prevention Act of 1997 is a sensible, common sense approach toward containing the spread of AIDS. By using proven, public health techniques and sound medical practices, this bill will curtail the

spread of HIV. I thank the chair and encourage my colleagues to support this commonsense legislation.

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. 503

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 ''HIV Prevention Act of 1997''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The States should recognize that the terms ''acquired immune deficiency syndrome'' and ''AIDS'' are obsolete. In the case of individuals who are infected with the human immunodeficiency virus (commonly known as HIV), the more important medical fact for the individuals and for the protection of the public health is the fact of infection, and not just the later development of AIDS (the stage at which the infection causes symptoms). The term ''HIV disease'', meaning infection with HIV regardless of whether the infection has progressed to AIDS, more correctly defines the medical condition.

(2) The medical, public health, political, and community leadership must focus on the full course of HIV disease rather than concentrating on later stages of the disease. Continual focus on AIDS rather than the entire spectrum of HIV disease has left our Nation unable to deal adequately with the epidemic. Federal and State data collection efforts should focus on obtaining data as early as possible after infection occurs, while continuing to collect data on the symptomatic stage of the disease.

(3) Recent medical breakthroughs may enable doctors to treat HIV disease as a chronic disease rather than as a terminal disease. Early intervention in the progression of the infection is imperative to prolonging and improving the lives of individuals with the disease.

(4) The Centers for Disease Control and Prevention has recommended partner notification as a primary prevention service. The health needs of the general public, and the care and protection of those who do not have the disease, should be balanced with the needs of individuals with the disease in a manner that allows for the infected individuals to receive optimal medical care and for public health services to protect the uninfected.

(5) Individuals with HIV disease have an obligation to protect others from being exposed to HIV by avoiding behaviors that place others at risk of becoming infected. The States should have in effect laws providing that intentionally infecting others with HIV is a felony.

SEC. 3. PREVENTION OF TRANSMISSION OF HIV.

(a) REQUIREMENTS FOR STATES.—A State shall demonstrate to the satisfaction of the Secretary that the law or regulations of the State are in accordance with the following:

(1) REPORTING OF CASES.—The State requires that, in the case of a health professional or other entity that provides for the performance of a test for HIV on an individual, the entity confidentially report positive test results to the State public health officer, together with any additional necessary information, in order to carry out the following purposes:

(A) The performance of statistical and epidemiological analyses of the incidence in the State of cases of such disease.

(B) The performance of statistical and epidemiological analyses of the demographic characteristics of the population of individuals in the State who have the disease.

(C) The assessment of the adequacy of preventive services in the State with respect to the disease.

(D) The performance of the functions required in paragraph (2).

(2) FUNCTIONS.—The functions described in this paragraph are the following:

(A) PARTNER NOTIFICATION.—

(i) IN GENERAL.—The State requires that the public health officer of the State carry out a program of partner notification to inform individuals that the individuals may have been exposed to HIV.

(ii) DEFINITION.—For purposes of this paragraph, the term ''partner'' includes—

(I) the sexual partners of individuals with HIV disease;

(II) the partners of such individuals in the sharing of hypodermic needles for the intravenous injection of drugs; and

(III) the partners of such individuals in the sharing of any drug-related paraphernalia determined by the Secretary to place such partners at risk of HIV infection.

(B) COLLECTION OF INFORMATION.—The State requires that any information collected for purposes of partner notification be sufficient for the following purposes:

(i) To provide the partners of the individual with HIV disease with an appropriate opportunity to learn that the partners have been exposed to HIV.

(ii) To provide the partners with counseling and testing for HIV disease.

(iii) To provide the individual who has the disease with information regarding therapeutic measures for preventing and treating the deterioration of the immune system and conditions arising from the disease, and to provide the individual with other preventive information.

(iv) With respect to an individual who undergoes testing for HIV disease but does not seek the results of the testing, and who has positive test results for the disease, to recall and provide the individual with counseling, therapeutic information, and other information regarding preventative health services appropriate for the individual.

(C) COOPERATION IN NATIONAL PROGRAM.—The State cooperates with the Director of the Centers for Disease Control and Prevention in carrying out a national program of partner notification, including the sharing of information between the public health officers of the States.

(3) TESTING OF CERTAIN INDICTED INDIVIDUAL.—With respect to a defendant against whom an information or indictment is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in sexual activity, the State requires the following:

(A) IN GENERAL.—That the defendant be tested for HIV disease if—

(i) the nature of the alleged crime is such that the sexual activity would have placed the victim at risk of becoming infected with HIV; or

(ii) the victim requests that the defendant be so tested.

(B) TIMING.—That if the conditions specified in subparagraph (A) are met, the defendant undergo the test not later than 48 hours after the date on which the information or indictment is presented, and that as soon thereafter as is practicable the results of the test be made available to—

(i) the victim;

(ii) the defendant (or if the defendant is a minor, to the legal guardian of the defendant);

(iii) the attorneys of the victim;

(iv) the attorneys of the defendant;

(v) the prosecuting attorneys;

(vi) the judge presiding at the trial, if any; and

(vii) the principal public health official for the local governmental jurisdiction in which the crime is alleged to have occurred.

(C) FOLLOW-UP TESTING.—That if the defendant has been tested pursuant to subparagraph (B), the defendant, upon request of the victim, undergo such follow-up tests for HIV as may be medically appropriate, and that as soon as is practicable after each such test the results of the test be made available in accordance with subparagraph (B) (except that this subparagraph applies only to the extent that the individual involved continues to be a defendant in the judicial proceedings involved, or is convicted in the proceedings).

(D) CONSIDERATION OF RESULTS.—That, if the results of a test conducted pursuant to subparagraph (B) or (C) indicate that the defendant has HIV disease, such fact may, as relevant, be considered in the judicial proceedings conducted with respect to the alleged crime.

(4) TESTING OF CERTAIN INDIVIDUALS.—

(A) PATIENTS.—With respect to a patient who is to undergo a medical procedure that would place the health professionals involved at risk of becoming infected with HIV, the State—

(i) authorizes such health professionals in their discretion to provide that the procedure will not be performed unless the patient undergoes a test for HIV disease and the health professionals are notified of the results of the test; and

(ii) requires that, if such test is performed and the patient has positive test results, the patient be informed of the results.

(B) FUNERAL-RELATED SERVICES.—The State authorizes funeral-services practitioners in their discretion to provide that funeral procedures will not be performed unless the body involved undergoes a test for HIV disease and the practitioners are notified of the results of the test.

(5) INFORMING OF FUNERAL-SERVICE PRACTITIONERS.—The State requires that, if a health care entity (including a hospital) transfers a body to a funeral-services practitioner and such entity knows that the body is infected with HIV, the entity notify the funeral-services practitioner of such fact.

(6) HEALTH INSURANCE ISSUERS.—

(A) IN GENERAL.—The State requires that, if a health insurance issuer requires an applicant for such insurance to be tested for HIV disease as a condition of issuing such insurance, the applicant be afforded an opportunity by the health insurance issuer to be informed, upon request, of the HIV status of the applicant.

(B) DEFINITION.—For purposes of this paragraph, the term ''health insurance issuer'' means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in the State and which is subject to State law which regulates insurance.

(C) RULE OF CONSTRUCTION.—This paragraph may not be construed as affecting the provisions of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1154) with respect to group health plans.

(7) ADOPTION.—The State requires that, if an adoption agency is giving significant consideration to approving an individual as an adoptive parent of a child and the agency knows whether the child has HIV disease,

such prospective adoptive parent be afforded an opportunity by the agency to be informed, upon request, of the HIV status of the child.

(b) SENSE OF CONGRESS REGARDING HEALTH PROFESSIONALS WITH HIV DISEASE.—It is the sense of Congress that, with respect to health professionals who have HIV disease—

(1) the health professionals should notify their patients that the health professionals have the disease in medical circumstances that place the patients at risk of being infected with HIV by the health professionals; and

(2) the States should encourage the medical profession to develop guidelines to assist the health professionals in so notifying patients.

(c) APPLICABILITY OF REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to States upon the expiration of the 120-day period beginning on the date of the enactment of this Act.

(2) DELAYED APPLICABILITY FOR CERTAIN STATES.—In the case of the State involved, if the Secretary determines that a requirement established by subsection (a) cannot be implemented in the State without the enactment of State legislation, then such requirement applies to the State on and after the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session is deemed to be a separate regular session of the State legislature.

(d) DEFINITIONS.—In this section:

(1) HIV.—The term ''HIV'' means the human immunodeficiency virus.

(2) HIV DISEASE.—The term ''HIV disease'' means infection with HIV and includes any condition arising from such infection.

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

(e) RULE OF CONSTRUCTION.—Part D of title XXVI of the Public Health Service Act (42 U.S.C. 300ff–71 et seq.) is amended by inserting after section 2675 the following section:

''SEC. 2675A. RULE OF CONSTRUCTION.

''With respect to an entity that is an applicant for or a recipient of financial assistance under this title, compliance by the entity with any State law or regulation that is consistent with section 3 of the HIV Prevention Act of 1997 may not be considered to constitute a violation of any condition under this title for the receipt of such assistance.''.

SEC. 4. SENSE OF CONGRESS REGARDING INTENTIONAL TRANSMISSION OF HIV.

It is the sense of Congress that the States should have in effect laws providing that, in the case of an individual who knows that he or she has HIV disease, it is a felony for the individual to infect another with HIV if the individual engages in the behaviors involved with the intent of so infecting the other individual.

SEC. 5. SENSE OF CONGRESS REGARDING CONFIDENTIALITY.

It is the sense of the Congress that strict confidentiality should be maintained in carrying out the provisions of section 3 of the this Act.

By Mrs. FEINSTEIN (for herself, Mrs. BOXER and Ms. SNOWE):

S. 504. A bill to amend title 18, United States Code, to prohibit the sale of personal information about children without their parent's consent, and for other purposes; to the Committee on the Judiciary.

THE CHILDREN'S PRIVACY PROTECITON AND PARENTAL EMPOWERMENT ACT OF 1997

Mrs. FEINSTEIN. Mr. President, I rise to urge my colleagues to support this simple but strong legislation to protect our children.

This bill, sponsored by myself, Senator BOXER, and Senator SNOWE, would provide three simple protections:

First, the bill would prohibit list brokers from selling personal information about children under 16 to anyone, without first getting the parent's consent.

All kinds of information about our children—more facts than most of us might think or hope for—is rapidly becoming available through these list brokers. It is only a matter of time before this information begins to fall into the wrong hands.

Last year, a reporter in Los Angeles was easily able to purchase parents' names, birth months and addresses for 5,500 children aged 1–12 in a particular neighborhood. The reporter used the name of a fictitious company, gave a non-working telephone number, had no credit card or check, and identified herself as Richard Allen Davis, the notorious murderer of Polly Klaas. When ordering the list, the company representative simply told her ''Oh, you have a famous name,'' and sent her the information C.O.D. This is simply unacceptable.

Second, the bill would give parents the authority to demand information from the list brokers who traffic in the personal data of their children—brokers will be required to provide parents with a list of all those to whom they sold information about the child, and must also tell the parent precisely what kind of information was sold.

If this personal information is out there, and brokers are buying and selling it back and forth, it is only reasonable that we allow parents to find out what information has been sold and to whom that information has been given.

Finally, this bill would prohibit list brokers from using prison labor to input personal information. This seems like common sense to most of us, but unfortunately the use of prison labor is not currently prohibited.

Last year when I introduced this bill, I spoke of the plight of Beverly Dennis, an Ohio grandmother who filled out a detailed marketing questionnaire about her buying habits for a mail in survey. She filled out the questionnaire when she was told that she might receive free product samples and helpful information. Rather than receiving product information, however, she soon began to receive sexually explicit, fact-specific letters from a convicted rapist serving time.

The rapist, writing from his prison cell, had learned the very private, intimate details about her life because he was keypunching her personal questionnaire data into a computer for a subcontractor. Ms. Dennis received letters with elaborate sexual fantasies, weaved around personal facts provided by her in the questionnaire. This bill would have prevented the situation from ever occurring.

Finally, Mr. President, this year I have included in the bill exemptions for sales to law enforcement organizations, the Center for Missing and Exploited Children, and to accredited colleges and universities. We received a great deal of input since we introduced the bill last June, and I believe we have addressed most of the concerns about our bill with these exemptions.

Schools will be able to get information about prospective students, law enforcement will be able to get the lists to help them find missing kids, and the Center for Missing and Exploited Children will be able to do likewise.

This bill is really very simple. Some marketing companies may be unhappy that the government is trying to legislate how they do business, but we have to weigh the safety and well-being of our children against the small inconvenience of requiring parental consent in these cases. Given the rapidly changing nature of the marketing business and the ways in which child molesters and other criminals operate, this bill is an important step in protecting our kids from those who would do them harm.

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

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

S. 504

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 ''Children's Privacy Protection and Parental Empowerment Act of 1997''.

SEC. 2. PROHIBITION OF CERTAIN ACTIVITIES RELATING TO PERSONAL INFORMATION ABOUT CHILDREN.

(a) IN GENERAL.—Chapter 89 of title 18, United States Code, is amended by adding at the end the following:

''§ 1822. Sale of personal information about children

''(a) PROHIBITION.—Whoever, in or affecting interstate or foreign commerce—

''(1) being a list broker, knowingly—

''(A) sells, purchases, or receives remuneration for providing personal information about a child knowing that such information pertains to a child without the consent of a parent of that child;

''(B) conditions any sale or service to a child or to that child's parent on the granting of such a consent; or

''(C) fails to comply with the request of a parent—

''(i) to disclose the source of personal information about that parent's child;

''(ii) to disclose all information that has been sold or otherwise disclosed by that list broker about that child; or

''(iii) to disclose the identity of all persons to whom the list broker has sold or otherwise disclosed personal information about that child;

''(2) being a person who, using any personal information about a child in the course of commerce that was obtained for commercial

purposes, has directly contacted that child or a parent of that child to offer a commercial product or service to that child, knowingly fails to comply with the request of a parent—

''(A) to disclose to the parent the source of personal information about that parent's child;

''(B) to disclose all information that has been sold or otherwise disclosed by that person about that child; or

''(C) to disclose the identity of all persons to whom such a person has sold or otherwise disclosed personal information about that child;

''(3) knowingly uses prison inmate labor, or any worker who is registered pursuant to title XVII of the Violent Crime Control and Law Enforcement Act of 1994, for data processing of personal information about children; or

''(4) knowingly distributes or receives any personal information about a child, knowing or having reason to believe that the information will be used to abuse the child or physically to harm the child;

shall be fined under this title, imprisoned not more than 1 year, or both.

''(b) CIVIL ACTIONS.—A child or the parent of that child with respect to whom a violation of this section occurs may in a civil action obtain appropriate relief, including monetary damages of not less than $1,000. The court shall award a prevailing plaintiff in a civil action under this subsection a reasonable attorney's fee as a part of the costs.

''(c) LIMITATION.—Nothing in this section shall be construed to affect the sale of lists to—

''(1) any Federal, State, or local government agency or law enforcement organization;

''(2) the National Center for Missing and Exploited Children; or

''(3) any institution of higher education (as that term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

''(d) DEFINITIONS.—In this section—

''(1) the term 'child' means a person who has not attained the age of 16 years;

''(2) the term 'parent' includes a legal guardian;

''(3) the term 'personal information' means information (including name, address, telephone number, social security number, and physical description) about an individual identified as a child, that would suffice to physically locate and contact that individual; and

''(4) the term 'list broker' means a person who, in the course of business, provides mailing lists, computerized or telephone reference services, or the like containing personal information of children.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 89 of title 18, United States Code, is amended by adding at the end the following:

''1822. Sale of personal information about children.''.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. D'AMATO, Mr. THOMPSON, Mr. ABRAHAM, and Mrs. FEINSTEIN):

S. 505. A bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes; to the Committee on the Judiciary.

THE COPYRIGHT TERM EXTENSION ACT OF 1997

By Mr. HATCH:

S. 506. A bill to clarify certain copyright provisions, and for other purposes; to the Committee on the Judiciary.

THE COPYRIGHT CLARIFICATIONS ACT OF 1997

By Mr. HATCH:

S. 507. A bill to establish the United States Patent and Trademark Organization as a Government corporation, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes; to the Committee on the Judiciary.

THE OMNIBUS PATENT ACT OF 1997

Mr. HATCH. Mr. President, intellectual property is vitally important to sustaining the high level of creativity that America enjoys, which not only adds to the fund of human knowledge and the progress of science and technology, but also results in the more tangible benefits of a strong economy and a favorable balance of trade.

For example, in 1994, copyright-related industries contributed more than $385 billion to the American economy, or more than 5 percent of the total gross domestic product. This represents more than $50 billion in foreign sales, which exceeds every other leading industry sector except automotive and agriculture in contributions to a favorable trade balance. From 1977 to 1994, these same industries grew at a rate that was twice the rate of growth of the national economy, and the rate of job growth in these industries since 1987 has outpaced that of the overall economy by more than 100 percent.

Mr. President, this is impressive to say the least. And these figures don't begin to take into account the contributions of other intellectual property sectors, including trade in patented technologies and the economic value of famous marks. Clearly intellectual property has become one of our Nation's most valuable resources.

As you know, the Judiciary Committee, is charged with monitoring the effectiveness of our intellectual property laws and with proposing to the Senate changes that are called for to meet new challenges. Because of the digital age and the global economy, we've had our hands full. Let me just go through a few highlights.

In the 104th Congress, we passed the Digital Performance Right in Sound Recordings Act, which, as its name signifies, adjusts the existing performance right in the Copyright Act to the demands of the new digital media. I also introduced, with Senator LEAHY, the National Information Infrastructure (NII) Copyright Protection Act of 1995 to begin to lay down the rules of the road for the information highway. The Committee held two hearings on this bill, but not enough time was left in the 104th to complete our deliberations.

In response to the challenges of the global economy, I introduced the Copyright Term Extension Act of 1995, along with Senator THOMPSON and Senator FEINSTEIN, to give U.S. copyright owners parity of term in the European Union. The EU has issued a directive to increase the minimum basic copyright term from life-plus-50 years to life-plus-70. If we do not follow suit, U.S. works in potentially all EU countries will receive 20 years less protection than the works of the nationals of the host country.

The Copyright Term Extension Act was approved by the Judiciary Committee. I am confident that the bill would have been approved by the Senate as well with little or no opposition, but unfortunately this important legislation was held hostage by advocates of music licensing reform—a totally unrelated issue.

In patents, too, we were very active. The Biotechnology Process Patents Act was passed. Also, I introduced the Omnibus Patent Act of 1996, which remade the Patent and Trademark Office into a government corporation. The corporate form would allow the Patent and Trademark Office to escape the micromanagement that it currently endures from the Commerce Department, although my bill preserved a policy link with the Department. The bill also made several very important substantive changes to the Patent Act.

After some tough negotiations, the Clinton administration ended up supporting the final version of the bill. The Judiciary Committee had a hearing on the bill, but Committee action was held hostage to yet another, totally unrelated issue—judicial nominations.

In addition to improving the efficiency of the patent and trademark systems, I have worked tirelessly for a number of years to rectify the injustice of making American inventors bear a heavier burden in deficit reduction than the ordinary citizen through the withholding of patent surcharge funds. Again last year I led an ultimately unsuccessful effort to ease this tax on American ingenuity.

Now no one has demonstrated more zeal for a balanced budget than I have. As you know, Mr. President, I was on the Senate floor for 3 weeks trying to get this body to discipline itself through the Balanced Budget Amendment. But I do not believe that inventors ought to pay a surcharge on their patent applications only to see that surcharge used for the general revenue rather than to improve the service they receive from the PTO. The PTO, after all, is a self-sustaining agency, not receiving a penny from taxpayer dollars. What they charge, they ought to keep. I am currently looking at a legislative solution to this problem.

I have also been looking into the special patent restoration rules that apply to pharmaceutical products. In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act. Essentially, this law—commonly known as, I am proud to say, the Hatch–Waxman Act—allowed generic drug manufacturers to rely on the costly safety and efficacy data of pioneer

drug manufacturers and provided for partial patent restoration for pioneer products to offset a portion of the patent term lost due to FDA regulatory review.

I know that many are interested in revisiting particular provisions of the Hatch–Waxman Act now that we have had a decade-plus experience under the new system. In my view, to be successful, any Hatch–Waxman reform must be balanced in a manner that the American public, generic drug firms, and the R&D manufacturers are all able to realize benefits. Toward this end, my staff and I have been meeting with representatives of both segments of the pharmaceutical industry to identify areas of concern.

It is my hope that these discussions will result in proposals to create new incentives in our intellectual property protection system and efficiency in our regulatory processes that will increase the long-term strength of both segments of the industry. Our bottom line goal is clear: We want a climate that produces both innovative new medicines and lower-cost generic copies of off-patent products.

I do not guarantee success in this endeavor, I can only commit that I will listen to all parties involved and see if we can work together to forge a compromise on Hatch–Waxman reform. I would like to do it if we can, but I will not support any approach that is not balanced.

Let me just add that my willingness to work with all parties should not be construed as giving a veto to any particular party. Ultimately, the test I use will be: Will the American public be better off if a particular legislative proposal is adopted? If, and only if, this test can be met, will I ask others in this body to join me in moving legislation.

Mr. President, let me now turn to trademark legislation, an area in which we have had a lot of success. Both the Federal Trademark Dilution Act and the Anticounterfeiting Consumer Protection Act became law in the 104th Congress. The Federal Trademark Dilution Act was significant in that it established the first-ever Federal anti-dilution statute to provide nationwide protection against the whittling away of famous marks. The Anticounterfeiting Consumer Protection Act brought our Nation's anticounterfeiting laws up to speed with the quickly evolving counterfeiting trade by providing stiffer civil and criminal penalties and increasing the tools available to law enforcement to give them the upper hand in this fight.

As you can see though, Mr. President, we have a lot of unfinished business, so today I'm introducing two bills from the last Congress, the Omnibus Patent Act, and the Copyright Term Extension Act. In addition, I'm introducing the Copyright Clarification Act, which is a series of truly technical amendments to the Copyright Act. I am pleased that Senator LEAHY, the distinguished ranking member of the Judiciary Committee, Senator D'AMATO, the distinguished junior Senator from New York, Senator ABRAHAM, the distinguished junior Senator from Michigan, and Senator FEINSTEIN, the distinguished senior Senator from California, are joining me as cosponsors of the Copyright Term Extension Act of 1997.

Of course, Mr. President, these three bills do not comprise my entire intellectual property agenda. For example, at my request, the Copyright Office is taking a look at sui generis protection of databases and at amendments to the Satellite Home Viewer Act. The Copyright Office may very well have recommendations for legislation in this area, and I may introduce such legislation before the end of this session. However, because the three bills I am introducing today have widespread support and have been thoroughly discussed in the last Congress, it is appropriate that they be the first to be considered—old business before new business.

THE OMNIBUS PATENT ACT OF 1997

Mr. President, the Omnibus Patent Act of 1997 is identical to the latest version of a bill I introduced last Congress, S. 1961, except for a few technical changes. Last Congress, S. 1961 gained bipartisan support in the Senate, its counterpart, H.R. 3460 gained bipartisan support in the House, and the Clinton administration also supported this bill. Further, a large, broad coalition of representatives of the patent industry were strongly supportive of the bill. Additionally, the National Treasury Employees Union and the AFL–CIO both supported the provisions that affect their membership. I am fully confident that this far-reaching, bipartisan support will continue this Congress.

I have no doubt that had a vote been taken on S. 1961, it would have passed the Senate by an overwhelming vote. Unfortunately, we did not take up S. 1961 until later in the 104th Congress, and time ran out before we were able to reach a vote on this important measure.

In order to be certain that such a problem is not repeated, I am beginning this process early in the 105th Congress. The House is already acting to move through this important and needed measure without delay. The House counterpart to my bill, H.R. 400, was introduced by Congressman COBLE, the chairman of the House Judiciary Subcommittee on Courts and Intellectual Property. Chairman COBLE has held a hearing on H.R. 400, and the bill was subsequently favorably reported by the subcommittee and the full House Judiciary Committee. I look forward to the consideration of H.R. 400 by the full House of Representatives.

During the last Congress this bill was the subject of multiple hearings in both Houses of Congress. But, this is a new Congress, so I would like to review, once again, the purposes and goals of the Omnibus Patent Act of 1997.

The purposes of this bill are: (1) to provide for more efficient administration of the patent and trademark systems; (2) to discourage ''gaming'' the patent system while ensuring against loss of patent term and theft of American inventiveness; (3) to protect the rights of prior users of inventions which are later patented by another; (4) to increase the reliability of patents by allowing third parties more meaningful participation in the reexamination process; (5) to make certain that American provisional applications are given the same weight as other countries' provisional applications in other countries' courts; (6) to close a loophole in the plant patent provisions of the Patent Act; and (7) to allow for the filing of patent and trademark documents by electronic medium.

THE UNITED STATES PATENT AND TRADEMARK OFFICE

The United States leads the world in innovation. That leadership is a direct result of our long-standing commitment to strong patent protection. The strong protection of patents and trademarks are of vital importance not only to continued progress in science, but also to the economy. A vast array of industries depend on patents. From the chemical, electrical, biotechnological, and manufacturing industries to computer software and hardware. And trademark is important to all businesses, period.

I believe that we must not only keep our intellectual property laws current and strong, but we must do everything we can to make sure that the offices responsible for the administration of those laws are properly equipped and able to do their job as efficiently as possible.

Thus, the first provision of this bill makes the Patent and Trademark Office a government corporation, called the U.S. Patent and Trademark Organization. Basically, the effect of this provision is to separate the administration of the patent and trademark systems from micromanagement by the Department of Commerce, while maintaining a policy link to that Department. The current PTO has been hampered by burdensome red tape regarding personnel matters, and the office has also been held back from reaching its full potential by the repeated siphoning off of its user fees for other, unrelated expenditures.

The government corporation proposal was the subject of much discussion last Congress. The Administration, various union representatives, representatives of the users of the Patent and Trademark Office, and, of course, the officers of the PTO itself were all involved in helping me to craft this consensus legislation. I am confident that the product of these negotiations will enhance the efficiency of the USPTO while protecting the interests of the Commerce Department and the employees of the USPTO.

The structure of the USPTO under my bill vests primary responsibility for patent and trademark policy in the head of the USPTO, the Director, and primary responsibility for administration of the patent and trademark systems in the respective Commissioners of Patents and Trademarks. The corporate form of the USPTO inoculates the Patent and Trademark Offices as much as possible from the bureaucratic sclerosis that infects many federal agencies. Further, by subdividing the organization into separate patent and trademark offices, the bill will help raise the prominence of trademarks, an important part of intellectual property but long seen as the poor step-child of the more prominent patent field.

The parties interested in patents and trademarks support having close access to the President by having the chief intellectual policy advisor directly linked to a cabinet officer. The Secretary of Commerce is a logical choice. As a result, while this bill would make the day-to-day functioning of the USPTO independent of the Commerce Department, the policy portion of the new organization will still be under the policy direction of the Secretary of Commerce. Further, as a government corporation, as opposed to a private corporation, the USPTO will remain subject to congressional oversight.

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

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

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

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

When a competitor finally did develop the same technology, the submarine applicant sprang his trap. He would cease delaying his application and it would finally be approved. Then, he sued his competitor for infringing on his patent. Thus, he maximized his own patent term while tricking his competitors into wasting their money.

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

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

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

The question we face now, Mr. President, is how to fix this new problem. Some have suggested combining the old seventeen years from granting system with the new twenty years from filing and giving the patent holder whichever is longer. But that approach leads to uncertainty in the length of a patent term and even worse, resurrects the submarine patent problem by giving benefits to an applicant who purposefully delays his own application. I believe that Titles II and III of the Omnibus Patent Act of 1997 solve the administrative delay dilemma without recreating old problems.

EARLY PUBLICATION

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

The claims that early publication will allow foreign competitors to steal American technology are simply not true. To start with, between 75 and 80 percent of patent applications filed in the United States are also filed abroad where 18 month publication is already the rule. Further, I have provided in my bill for delayed publication of applications only submitted in the United States to protect them from competitors. Additionally, once an application is published, Title II grants the applicant ''provisional rights,'' that is, legal protection for his invention. Thus, while it is true that someone could break the law and steal the invention, that is true under current law and will always be true, and it will subject them to liability for their illegal actions.

PATENT TERM RESTORATION

Title III deals directly with the administrative delay problem by restoring to the patent holder any part of the term that is lost due to undue administrative delay. To prevent any possible confusion over what undue delay means, the bill sets specific deadlines for the Patent Office to act. The office has fourteen months to issue a first office action and four months to respond to subsequent applicant filings. Any delay beyond those deadlines is considered undue delay and will be restored to the patent term. Thus, Title III solves the administrative delay problem in a clear, predictable, and objective manner.

PRIOR DOMESTIC COMMERCIAL USE

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

PATENT REEXAMINATION REFORM

Title V provides for a greater role for third parties in patent re-examination proceedings. Nothing is more basic to an effective system of patent protection than a reliable examination process. Without the high level of faith that the PTO has earned, respect for existing patents would fall away and innovation would be discouraged for fear of a lack of protection for new inventions.

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

Title V amends the existing reexamination process to allow third-parties

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

There are also safeguards to prevent this process from being abused by those who merely seek to harass a patentholder. First, if a third-party requestor loses an appeal of his reexamination request, he may not subsequently raise any issue he could have raised during the examination proceeding in any forum. Second, a party that loses a civil action where that party failed to show the invalidity of the patent, the party may not subsequently seek a reexamination of such patent on any grounds that could have been raised in the civil action. Third, the burden of reexamination on the patent-holder is minimized by the fact that a reexamination is not like a court review, and that the patent holder need not submit any documentation in order to prevail.

PROVISIONAL APPLICATIONS FOR PATENTS

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

PLANT PATENTS

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

ELECTRONIC FILING

Lastly, this title also allows for the filing of patent and trademark documents by electronic medium. It is high time that the government office that is, by definition, always on the cutting edge of technology, be permitting to enter the age of computers.

Mr. President, this bill is an important, and necessary measure that enjoys overwhelming support. I am confident that it will be enacted into law this Congress.

THE COPYRIGHT TERM EXTENSION ACT OF 1997

Mr. President, the purpose of the Copyright Term Extension Act of 1997 is to ensure adequate copyright protection for American works abroad by extending the U.S. term of copyright protection for an additional 20 years. It also includes a provision reversing the Ninth Circuit decision in *La Cienega Music Co.* v. *ZZ Top* that calls into question the copyrights of thousands of musical works first distributed on sound recordings.

Except for the *La Cienega* provision, the substance of this bill is identical to S. 483, the Copyright Term Extension Act, which was passed by the Judiciary Committee on May 23, 1996, with overwhelming bipartisan support. This legislation also has the strong support of the Administration, as expressed by both the Commissioner of Patents and Trademarks, Bruce Lehman, and the Register of Copyrights, Marybeth Peters, in their testimony before the Judiciary Committee in the last Congress.

Twenty years ago, Mr. President, Congress fundamentally altered the way in which the U.S. calculates its term of copyright protection by abandoning a fixed-year term of protection and adopting a basic term of protection based on the life of the author. In adopting the life-plus-50 term, Congress cited three primary justifications for the change. 1) the need to conform the U.S. copyright term with the prevailing worldwide standard; 2) the insufficiency of the U.S. copyright term to provide a fair economic return for authors and their dependents; and, 3) the failure of the U.S. copyright term to keep pace with the substantially increased commercial life of copyrighted works resulting from the rapid growth in communications media.

Developments over the past 20 years have led to a widespread reconsideration of the adequacy of the life-plus-50-year term based on these same reasons. Among the main developments is the effect of demographic trends, such as increasing longevity and the trend toward rearing children later in life, on the effectiveness of the life-plus-50 term to provide adequate protection for American creators and their heirs. In addition, unprecedented growth in technology over the last 20 years, including the advent of digital media and the development of the National Information Infrastructure and the Internet, have dramatically enhanced the marketable lives of creative works. Most importantly, though, is the growing international movement toward the adoption the longer term of life-plus-70.

Thirty-five years ago, the Permanent Committee of the Berne Union began to reexamine the sufficiency of the life-plus-50-year term. Since then, a growing consensus of the inadequacy of the life-plus-50 term to protect creators in an increasingly competitive global marketplace has led to actions by several nations to increase the duration of copyright. Of particular importance is the 1993 directive issued by the European Union, which requires its member countries to implement a term of protection equal to the life of the author plus 70 years by July 1, 1995.

According to the Copyright Office, Belgium, Denmark, Finland, Germany, Greece, Ireland, Spain, and Sweden have all notified their laws to the European Commission and the Commission has found them to be in compliance with the EU Directive. Luxembourg, The Netherlands, Portugal, the United Kingdom, and Austria have each notified their implementing laws to the Commission and are awaiting certification. Other countries are currently in the process of bringing their laws into compliance. And, as the Register of Copyrights has stated, those countries that are seeking to join the European Union, including Poland, Hungary, Turkey, the Czech Republic, and Bulgaria, are likely to amend their copyright laws to conform with the life-plus-70 standard.

The reason this is of such importance to the United States is that the EU Directive also mandates the application of what is referred to as the rule of the shorter term. This rule may also be applied by adherents to the Berne Convention and the Universal Copyright Convention. In short, this rule permits those countries with longer copyright terms to limit protection of foreign works to the shorter term of protection granted in the country of origin. Thus, in those countries that adopt the longer term of life-plus-70, American works will forfeit 20 years of available protection and be protected instead for only the duration of the life-plus-50 term afforded under U.S. law.

Mr. President, I've already cited some statistics about the importance of copyright to our national economy. The fact is that America exports more copyrighted intellectual property than any country in the world, a huge percentage of it to nations of the European Union. In fact, intellectual property is our third largest export. And, according to 1994 estimates, copyright industries account for some 5.7 percent of the total gross domestic product. Furthermore, copyright industries are creating American jobs at twice the rate of other industries, with the number of U.S. workers employed by core copyright industries more than doubling between 1977 and 1994. Today, these industries contribute more to the economy and employ more workers than any single manufacturing sector, accounting for nearly 5 percent of the total U.S. workforce. In fact, in 1994, the core copyright industries employed more workers than the four leading noncopyright manufacturing sectors combined.

Clearly, Mr. President, America stands to lose a significant part of its

international trading advantage if our copyright laws do not keep pace with emerging international standards. Given the mandated application of the rule of the shorter term under the EU Directive, American works will fall into the public domain 20 years before those of our European trading partners, undercutting our international trading position and depriving copyright owners of two decades of income they might otherwise have. Similar consequences will follow in those nations outside the EU that choose to exercise the rule of the shorter term under the Berne Convention and the Universal Copyright Convention.

Mr. President, adoption of the Copyright Term Extension Act will ensure fair compensation for the American creators whose efforts fuel the intellectual property sector of our economy by allowing American copyright owners to benefit to the fullest extent from foreign uses and will, at the same time, ensure that our trading partners do not get a free ride from their use of our intellectual property. And, as stated very simply by the Register of Copyrights in her testimony before the Judiciary Committee in the last Congress: ''[i]t does appear that at some point in the future the standard will be life plus 70. The question is at what point does the United States move to this term * * *. As a leading creator and exporter of copyrighted works, the United States should not wait until it is forced to increase the term, rather it should set an example for other countries.''

Mr. President, this bill is of crucial importance to our Nation's copyright owners and to our economy. It is also a balanced approach. It contains a provision, allowing the actual creators of copyrighted works in certain circumstances to bargain for the extra 20 years, except in the case of works made for hire. The libraries and archives, too, will be pleased to see that the bill provides them with additional latitude to reproduce and distribute material during the extension term, and it does not extend the copyright term for certain works that were unpublished at the time of the effective date of the 1976 act. This latter provision means that libraries and archives will be able to go forward with their plans to publish those unpublished works in 2003, the year after the current guaranteed term for unpublished works expires.

LA CIENEGA V. ZZ TOP

Mr. President, the Copyright Term Extension Act of 1997 also includes a provision to overturn the decision in *La Cienega Music Co.* v. *ZZ Top*, 53 F.3d 950 (9th Cir. 1995), cert denied, 116 S. Ct. 331 (1995). In general, *La Cienega* held that distributing a sound recording to the public—for example by sale—is a ''publication'' of the music recorded on it under the 1909 Copyright Act. Under the 1909 act, publication without copyright notice caused loss of copyright protection. Almost all music that was first published on recordings did not contain copyright notice, because publishers believed that it was not technically a publication. The Copyright Office also considered these musical compositions to be unpublished. The effect of *La Cienega*, however, is that virtually all music before 1978 that was first distributed to the public on recordings has no copyright protection—at least in the 9th Circuit.

By contrast, the Second Circuit in *Rosette* v. *Rainbo Record Manufacturing Corp.*, 546 F.2d 461 (2d Cir. 1975), *aff'd per curiam*, 546 F.2d 461 (2d Cir. 1976) has held the opposite—that public distribution of recordings was not a publication of the music contained on them. As I have noted, Rosette comports with the nearly universal understanding of the music and sound recording industries and of the Copyright Office.

Since the Supreme Court has denied cert in *La Cienega*, whether one has copyright in thousands of musical compositions depends on whether the case is brought in the Second or Ninth Circuits. This situation is intolerable. Overturning the La Cienega decision will restore national uniformity on this important issue by confirming the wisdom of the custom and usage of the affected industries and of the Copyright Office for nearly 100 years. My bill, however, also contains a provision to ensure that Congress' affirmation of this view will not retroactively upset the disposition of previously adjudicated or pending cases.

THE COPYRIGHT CLARIFICATION ACT OF 1997

Finally, Mr. President, I am introducing the Copyright Clarification Act of 1997 to make a series of truly technical amendments to the Copyright Act. The need for these technical corrections was brought to my attention in the last Congress by the Register of Copyrights, Ms. Marybeth Peters. This bill was passed by the House of Representatives in similar form in the 104th Congress. Unfortunately time ran short on our efforts to enact the same bill in the Senate. The version I am introducing today is identical to H.R. 672, which passed the House under suspension of the rules just yesterday. I hope the Senate will follow suit and act expeditiously to make these important technical amendments.

CONCLUSION

Mr. President, each of the three bills I am introducing today is tremendously important. For the information of my colleagues I am submitting a brief summary of the Omnibus Patent Act of 1997, a section-by-section analysis of the Copyright Term Extension Act of 1997, and a summary of provisions of the Copyright Clarification Act of 1997. I ask unanimous consent that they be printed in the RECORD, along with the text of the Copyright Term Extension Act of 1997 and the text of the Copyright Clarification Act of 1997.

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

S. 505

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 ''Copyright Term Extension Act of 1997''.

SEC. 2. DURATION OF COPYRIGHT PROVISIONS.

(a) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking ''February 15, 2047'' each place it appears and inserting ''February 15, 2067''.

(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—

(1) in subsection (a) by striking ''fifty'' and inserting ''70'';

(2) in subsection (b) by striking ''fifty'' and inserting ''70'';

(3) in subsection (c) in the first sentence—

(A) by striking ''seventy-five'' and inserting ''95''; and

(B) by striking ''one hundred'' and inserting ''120''; and

(4) in subsection (e) in the first sentence—

(A) by striking ''seventy-five'' and inserting ''95'';

(B) by striking ''one hundred'' and inserting ''120''; and

(C) by striking ''fifty'' each place it appears and inserting ''70''.

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1, 1978.—Section 303 of title 17, United States Code, is amended in the second sentence by striking ''December 31, 2027'' and inserting ''December 31, 2047''.

(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—

(1) IN GENERAL.—Section 304 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) in subparagraph (B) by striking ''47'' and inserting ''67''; and

(II) in subparagraph (C) by striking ''47'' and inserting ''67'';

(ii) in paragraph (2)—

(I) in subparagraph (A) by striking ''47'' and inserting ''67''; and

(II) in subparagraph (B) by striking ''47'' and inserting ''67''; and

(iii) in paragraph (3)—

(I) in subparagraph (A)(i) by striking ''47'' and inserting ''67''; and

(II) in subparagraph (B) by striking ''47'' and inserting ''67'';

(B) by amending subsection (b) to read as follows:

''(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.'';

(C) in subsection (c)(4)(A) in the first sentence by inserting ''or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2),'' after ''specified by clause (3) of this subsection,''; and

(D) by adding at the end the following new subsection:

''(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 for which the termination right provided in subsection (c) has expired by such date, where the author or owner of

the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

''(1) The conditions specified in subsection (c) (1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Copyright Term Extension Act of 1997.

''(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.''.

(2) COPYRIGHT RENEWAL ACT OF 1992.—Section 102 of the Copyright Renewal Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—

(A) in subsection (c)—

(i) by striking ''47'' and inserting ''67'';

(ii) by striking ''(as amended by subsection (a) of this section)''; and

(iii) by striking ''effective date of this section'' each place it appears and inserting ''effective date of the Copyright Term Extension Act of 1997''; and

(B) in subsection (g)(2) in the second sentence by inserting before the period the following: '', except each reference to forty-seven years in such provisions shall be deemed to be 67 years''.

SEC. 3. REPRODUCTION BY LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) by redesignating subsection (h) as subsection (i); and

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

''(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

''(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

''(A) the work is subject to normal commercial exploitation;

''(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

''(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

''(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.''.

SEC. 4. DISTRIBUTION OF PHONORECORDS.

Section 303 of title 17, United States Code, is amended—

(1) in the first sentence by striking ''Copyright'' and inserting ''(a) Copyright''; and

(2) by adding at the end the following:

''(b) The distribution before January 1, 1978, of phonorecords shall not constitute publication of the musical work embodied therein for purposes of the Copyright Act of 1909.''.

SEC. 5. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) DISTRIBUTION OF PHONORECORDS.—The amendment made by section 4 shall not be a basis to reopen an action nor to commence a subsequent action for copyright infringement if an action in which such claim was raised was dismissed by final judgment before the date of enactment of this Act. The amendment made by section 4 shall not apply to any action pending on the date of enactment in any court in which a party, prior to the date of enactment, sought dismissal of, judgment on, or declaratory relief regarding a claim of infringement by arguing that the adverse party had no valid copyright in a musical work by virtue of the distribution of phonorecords embodying it.

THE COPYRIGHT TERM EXTENSION ACT OF 1997 (S. 505)—SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The proposed legislation is entitled the Copyright Term Extension Act of 1997.

SECTION 2. DURATION OF COPYRIGHT PROVISIONS

Section 2(a)—Preemption with Respect to Other Laws

This subsection amends §301(c) of the Copyright Act to extend for an additional 20 years the application of common law and state statutory protection for sound recordings fixed before February 15, 1972. Under §301, the federal law generally preempts all state and common law protection of copyright with several exceptions, including one for sound recordings fixed before February 15, 1972 (the effective date of the statute extending federal copyright protection to sound recordings). Because federal copyright protection applies only to sound recordings fixed on or after that date, federal preemption of state statutory and common law protection of sound recordings fixed before February 15, 1972, would result in all of these works falling into the public domain. The §301 exception was enacted to ensure a 75-year minimum term of copyright protection for these works. By delaying the date of federal Copyright Act preemption of state statutory and common law protection of pre-February 15, 1972, sound recordings until February 15, 2067, this subsection extends the minimum term of protection for these works by 20 years.

Section 2(b)—Duration of Copyright: Works Created on or After January 1, 1978

This subsection amends §302 of the Copyright Act to extend the U.S. term of copyright protection by 20 years for all works created on or after January 1, 1978. For works in general, which currently enjoy protection for the life of the author plus 50 additional years under §301(a), this section creates a term equal to the life of the author plus 70 years. Likewise, for joint works under §302(b), this section extends the current term of protection to the life of the last surviving author plus 70 years. For anonymous works, pseudonymous works, and works made for hire, which are protected the shorter of 75 years from publication or 100 years from creation under §302(c), this subsection extends the term to the shorter of 95 years from publication or 120 years from the date the work is created.

This subsection also amends §302(e) of the Copyright Act to extend by 20 years the various dates relating to the presumptive death of the author as a complete defense against copyright infringement. Whereas current copyright protection is generally tied to the life of the author, it is sometimes not possible to ascertain whether the author of a work is still living, or even to identify the year of death if the author is deceased. §302(e) provides a complete defense against copyright infringement when the work is used more than 75 years after publication or 100 years after creation, whichever is less, provided the user obtains a certificate from the Copyright Office indicating that it has no record to indicate whether that person is living or died less than 50 years before. This subsection would extend protection of such works for an additional 20 years—95 years from publication and 120 years from creation—as well as base the presumptive death of the author on certification by the Copyright Office that is has no record to indicate whether the person is living or died less than 70 years before, which is 20 years longer than the 50 years currently provided for in §302(e).

Section 2(c)—Duration of Copyright: Works Created But Not Published or Copyrighted Before January 1, 1978

This subsection amends §303 of the Copyright Act to extend the minimum term of copyright protection by 20 years for works created but not copyrighted before January 1, 1978, provided they are published prior to December 31, 2002. Prior to 1978, unpublished works enjoyed perpetual copyright protection. Beginning in 1978, however, copyright protection for unpublished works was limited to the life of the author plus 50 years, or 100 years from creation for anonymous works, pseudonymous works, and works made for hire. Under §303, however, works created but not published before January 1, 1978, are guaranteed protection until at least December 31, 2002. Works subsequently published before that date are guaranteed further protection until December 31, 2027. This subsection provides an additional 20 years of protection for these subsequently published works by ensuring that copyright protection will not expire before December 31, 1047.

Section 2(d)(1)(A)—Duration of Copyright: Copyrights in Their First Term on January 1, 1978

This subsection amends §304(a) of the Copyright Act to extend the term of protection for works in their first term on January 1, 1978, by extending the renewal term from 47 years to 67 years. The effect of this amendment is to provide a composite term of protection of 95 years from the date of publication.

Section 2(d)(1)(B)—Duration of Copyright: Copyright in Their Renewal Term or Registered for Renewal Before January 1, 1978

This subsection amends §304(b) of the Copyright Act to extend the copyright term of pre-1978 works currently in their renewal term from 75 years to 95 years. As amended, this section clarifies that the extension applies only to works that are currently under copyright protection and is not intended to restore copyright protection to works already in the public domain.

Section 2(d)(1)(C) & (D)—Termination of Transfers and Licenses

These subsections amend §340(c) of the Copyright Act and create a new subsection (d) to provide a revived power of termination for individual authors whose right to terminate prior transfers and licenses of copyright under §304(c) has expired, provided the author has not previously exercised that right. Under §304(c), an author may terminate a prior transfer or license of copyright for any work, other than a work made for hire, by serving advance written notice upon the grantee or the grantee's successor at least 2, but not more than 10, years prior to the effective date of the termination. Such termination may be effected at any time within 5 years beginning at the end of 56 years from the date of publication. The purpose of this termination provision was to afford the individual creator the opportunity to bargain for the benefit of the 19-year extension provided by the 1976 Copyright Act.

For most individual creators, the existing power of termination under §304(c) will allow them to terminate prior transfers and to bargain for the benefit of both the extension under the 1976 Copyright Act and the extension under the Copyright Term Extension Act of 1997. For a much smaller group of individuals, the five-year window in which to terminate prior transfers under §304(c) has already expired. Thus, these creators are denied the opportunity to reap the benefits of the extended term, while the current copyright owners are given a 20-year windfall. This subsection amends the existing termination provisions under §304(c) of Copyright Act to create a revived window, beginning at the end of the current 75-year copyright term, in which individual creators or their heirs who did not terminate previous transfers or grants prior to the expiration of their right of termination under §304(c) may bargain for the benefit of the extended term.

Section 2(d)(2)—Copyright Renewal Act revisions

This subsection makes corresponding amendments to §102 of the Copyright Renewal Act of 1992 (P.L. 102–307, 106 Stat. 266) to reflect the changes made by the Copyright Term Extension Act.

Section 3—Clarification of Library Exemption of Exclusive Rights

This subsection amends §108 of the Copyright Act, governing limited exemptions from copyright infringement for libraries and archives, including nonprofit educational institutions that function as such, by redesignating subsection (h) as subsection (i) and inserting a new subsection (h). The new subsection (h)(1) will allow libraries, archives, and nonprofit educational institutions to reproduce and distribute copies of works for preservation, scholarship, or research during the last 20 years of copyright, if the works are not being commercially exploited and cannot be obtained at a reasonable price. The new subsection (h)(2) provides that the limited exemption does not apply where the copyright owner provides notice to the Copyright Office that the conditions regarding commercial exploitation and reasonable availability have not been met. The new subsection (h)(3) provides that the exemption does not apply to subsequent users other than the libraries or archives.

SECTION 4. DISTRIBUTION OF PHONORECORDS

Section 4 affirms the longstanding view that the public distribution of phonorecords prior to 1978, did not constitute publication of the musical composition embodied therein under the 1909 Copyright Act. This section overturns the decision in *LaCienega Music Co.* v. *Z.Z. Top.*, 53 F.3d 950 (9th Cir. 1995), *cert. denied*, 116 S.Ct. 331 (1995), which held that the sale of records constituted ''publication'' of the musical composition under the 1909 Act, and implicitly ruled that unless such a copy contained a copyright notice, the composition entered the public domain immediately upon the first sale. The result of such a view is that potentially thousands of musical compositions will be stripped of their presumed copyright protection as unpublished works under the 1909 Act. Section 13 adopts the view of the Second Circuit that the pre-1978 sale or distribution of recordings to the public did not constitute a publication for copyright purposes. *Rosette* v. *Rainbo Record Mfg. Corp.*, 354 F.Supp. 1183 (S.D.N.Y.), *aff'd per curiam*, 546 F.2d 461 (2d. Cir. 1976). This same view is adopted by the Copyright Office, which for years has refused to accept registrations for such phonorecords as published works.

SECTION 5. EFFECTIVE DATE

Subsection (a) provides that this Act and the amendments made thereby shall be effective on the date of enactment. Subsection (b) provides, however, that the overturning of the *LaCienega* decision will not retroactively upset the disposition of previously adjudicated or pending cases.

Mr. LEAHY. Mr. President, I am glad to be working with Senator HATCH as original cosponsors of this, the Copyright Term Extension Act of 1997. We worked together on this matter last Congress to craft a bill that was reported by the Judiciary Committee to the Senate by a vote of 15 to 3.

I raised a number of questions and concerns during our Judiciary Committee hearing on this issue back in September 1995. I spoke of a letter I had received from Prof. Karen Burke Lefevre of Vermont and the Rensselaer Polytechnic Institute. She expressed reservations, as a researcher and author, that Congress not extend the term for unpublished works beyond the term set by the 1976 Act. This category of materials is set to have its copyrights expire in 2002. They include anonymous works and unpublished works of interest to scholars. In section 2(c) of the bill we introduce today, we accommodate these interests and preserve the public availability of these materials in 2003, if they remain unpublished on December 31, 2002.

I want to thank Marybeth Peters, our Register of Copyrights, for supporting this improvement in the bill, and Senator HATCH for working with me on it.

I am concerned about libraries, educational institutions and nonprofits being able to access materials and provide access in turn for research, archival, preservation and other purposes. We have also made progress in this area as reflected in section 3 of the bill. Copyright industry and library representatives have narrowed their differences. I ask for their continued help in crafting the best balance possible to create public access for noncommercial purposes during the extension period without undercutting the value of copyrights.

At our hearing I also raised the notion of a new right of termination for works where the period of termination in current law has already passed and the 20-year extension inures to the benefit of a copyright transferee. This bill creates such a right of termination in section 2(d) of the bill.

At our hearing, I was still considering whether there was sufficient justification for extending the copyright term for an additional 20 years. At that time we were considering the European Union Directive to its member countries to provide copyright protection for a term of life plus 70 years by July 1, 1995. While many of our trading partners had not extended their terms by July 1995, they have acted to do so in the past 2 years.

I received a letter from Bruce A. Lehman, the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, in which he reported that Austria, Germany, Greece, France, Denmark, Belgium, Ireland, Spain, Italy and the United Kingdom had complied with the EU Directive on Copyright Term. Sweden, Portugal, Finland and the Netherlands were reported to have legislation to do so pending, as well. With so many of our trading partners moving to the longer term but preparing to recognize American works for only the shorter term, I believe it is time for us to act.

This bill also now includes a revised version of legislation that passed the House last Congress but was stalled in the Senate to clarify the Copyright Act of 1909 with regard to whether the distribution of phonorecords may be held to be a divesting publication of the copyright in the musical composition embodied therein. The revision is intended to clarify the law while not affecting cases in which parties have litigated or are litigating this issue.

Finally, I feel strongly that the extension of the copyright term should include public benefit, such as the creation of new works or benefit to public arts. Senator DODD, Senator KENNEDY, and I have been concerned about finding an appropriate way to benefit the public from this extension and continue to do so. Along these lines, the Copyright Office is examining how the extension in this bill will benefit copyright industries, authors and the public.

Given the changes made to meet the concerns that I raised with an earlier bill and in light of the international developments that are disadvantaging American copyrighted works, I cosponsored the Committee substitute at our Judiciary Committee executive business session last Congress and pressed for its consideration by the Senate. Unfortunately, this bill was not considered by the Senate during the 104th Congress.

Accordingly, I join with Senator HATCH to reintroduce this copyright term extension legislation this Congress and look forward to working with him to see to its enactment, without further delay.

Mrs. FEINSTEIN. Mr. President, I want to express my support for the Copyright Term Extension Act of 1997. I believe that extending the basic term of copyright protection by 20 years is a step in the right direction.

Perhaps the most compelling reason for this legislation is the need for greater international reciprocity in honoring copyright terms. The European Union has formally adopted a life plus 70 copyright term, and countries currently awaiting admission to the Union will adopt this standard in the future. Several countries outside of the European Union also have turned to the life plus 70 term, and many expect it to become the international standard.

By extending to life plus 70 years, Congress will help ensure that American creators receive comparable protection in other countries. If we do not act, other nations will not be required

to provide American authors and artists with any more protection than we offer them at home.

And, before the United States is the world's leader in the production of intellectual property, and because the State of California is home to many of the leading copyright industries, this issue is of great importance to me. We could be the net losers if we do not move toward greater harmonization.

Intellectual property—the collective creative output of America's makers of movies, music, art, and other works—is an enormous asset to the Nation's economy and balance of trade.

The International Intellectual Property Alliance estimates that copyright-related industries contributed more than $385 billion to the U.S. economy in 1994, with more than $50 billion in foreign sales.

Many other countries have preferred to appropriate and re-sell American films, music, and computer programs—some of the great exports of my State of California—rather than license American works.

The United States suffers greatly from illegal duplication of our work. Why, then, should we sit back and allow European companies to legally profit from the use of our works, without paying us in return?

As Prof. Arthur Miller of Harvard Law School aptly, albeit bluntly, put it: ''Unless Congress matches the copyright extension adopted by the European Union, we will lost 20 years of valuable protection against rip-off artists.'' Since America is the world's principal exporter of popular culture, extension of the basic copyright term is an important step in the right direction.

Reciprocity in copyright protection becomes even more necessary in today's global information society, where computer networks span the continents, and intellectual property is shuttled around the world in seconds.

The world has changed dramatically since 1976, when Congress established the present copyright terms. Many copyrighted works have a much longer commercial life than they used to have.

Videocassettes, cable television, and new satellite delivery systems have extended the commercial life of movies and television series. New technologies not only have extended but also have expanded the market for creative content. Cable television, which promises hundreds of different channels, has vastly expanded this market. Networked computers add to the demand for content. Interactive television promises to do the same.

The Copyright Term Extension Act will go far to address the global developments I have mentioned.

After introduction, I recommend that my colleagues and I further develop the language of the act to ensure that all contributors to the creative process receive benefits from the extended copyright term.

I urge my colleagues to support this bill.

S. 506

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 ''Copyright Clarifications Act of 1997''.

SEC. 2. SATELLITE HOME VIEWER ACT OF 1994.

The Satellite Home Viewer Act of 1994 (Public Law 103–369) is amended as follows:

(1) Section 2(3)(A) is amended to read as follows:

''(A) in clause (i) by striking '12 cents' and inserting '17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations'; and''.

(2) Section 2(4) is amended to read as follows:

''(4) Subsection (c) is amended—

''(A) in paragraph (1)—

''(i) by striking 'until December 31, 1992,';

''(ii) by striking '(2), (3) or (4)' and inserting '(2) or (3)'; and

''(iii) by striking the second sentence;

''(B) in paragraph (2)—

''(i) in subparagraph (A) by striking 'July 1, 1991' and inserting 'July 1, 1996'; and

''(ii) in subparagraph (D) by striking 'December 31, 1994' and inserting 'December 31, 1999, or in accordance with the terms of the agreement, whichever is later'; and

''(C) in paragraph (3)—

''(i) in subparagraph (A) by striking 'December 31, 1991' and inserting 'January 1, 1997';

''(ii) by amending subparagraph (B) to read as follows:

'(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

'(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

'(ii) the economic impact of such fees on copyright owners and satellite carriers; and

'(iii) the impact on the continued availability of secondary transmissions to the public.'; and

''(iii) in subparagraph (C), by inserting 'or July 1, 1997, whichever is later' after 'section 802(g)'.''.

(3) Section 2(5)(A) is amended to read as follows:

''(A) in paragraph (5)(C) by striking 'the date of the enactment of the Satellite Home Viewer Act of 1988' and inserting 'November 16, 1988'; and''.

SEC. 3. COPYRIGHT IN RESTORED WORKS.

Section 104A of title 17, United States Code, is amended as follows:

(1) Subsection (d)(3)(A) is amended to read as follows:

''(3) EXISTING DERIVATIVE WORKS.—(A) In the case of a derivative work that is based upon a restored work and is created—

''(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

''(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.''.

(2) Subsection (e)(1)(B)(ii) is amended by striking the last sentence.

(3) Subsection (h)(2) is amended to read as follows:

''(2) The 'date of restoration' of a restored copyright is—

''(A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date; or

''(B) the date of adherence or proclamation, in the case of any other source country of the restored work.''.

(4) Subsection (h)(3) is amended to read as follows:

''(3) The term 'eligible country' means a nation, other than the United States, that—

''(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

''(B) on such date of enactment is, or after such date of enactment becomes, a member of the Berne Convention; or

''(C) after such date of enactment becomes subject to a proclamation under subsection (g).

For purposes of this paragraph, a nation that is a member of the Berne Convention on the date of the enactment of the Uruguay Round Agreements Act shall be construed to become an eligible country on such date of enactment.''.

SEC. 4. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANSMISSIONS.

Section 114(f) of title 17, United States Code, is amended—

(1) in paragraph (1), by inserting '', or, if a copyright arbitration royalty panel is convened, ending 30 days after the Librarian issues and publishes in the Federal Register an order adopting the determination of the copyright arbitration royalty panel or an order setting the terms and rates (if the Librarian rejects the panel's determination)'' after ''December 31, 2000''; and

(2) in paragraph (2), by striking ''and publish in the Federal Register''.

SEC. 5. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.

Section 115(c)(3)(D) of title 17, United States Code, is amended by striking ''and publish in the Federal Register''.

SEC. 6. NEGOTIATED LICENSE FOR JUKEBOXES.

Section 116 of title 17, United States Code, is amended—

(1) by amending subsection (b)(2) to read as follows:

''(2) ARBITRATION.—Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).''; and

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

''(d) DEFINITIONS.—As used in this section, the following terms mean the following:

''(1) A 'coin-operated phonorecord player' is a machine or device that—

''(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated

by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

''(B) is located in an establishment making no direct or indirect charge for admission;

''(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

''(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

''(2) An 'operator' is any person who, alone or jointly with others—

''(A) owns a coin-operated phonorecord player;

''(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

''(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.''.

SEC. 7. REGISTRATION AND INFRINGEMENT ACTIONS.

Section 411(b)(1) of title 17, United States Code, is amended to read as follows:

''(1) serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and''.

SEC. 8. COPYRIGHT OFFICE FEES.

(a) FEE INCREASES.—Section 708(b) of title 17, United States Code, is amended to read as follows:

''(b) In calendar year 1997 and in any subsequent calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) in the following manner:

''(1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. The study shall also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.

''(2) The Register may, on the basis of the study under paragraph (1), and subject to paragraph (5), increase fees to not more than that necessary to cover the reasonable costs incurred by the Copyright Office for the services described in paragraph (1), plus a reasonable inflation adjustment to account for any estimated increase in costs.

''(3) Any newly established fee under paragraph (2) shall be rounded off to the nearest dollar, or for a fee less than $12, rounded off to the nearest 50 cents.

''(4) The fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system.

''(5) If the Register determines under paragraph (2) that fees should be increased, the Register shall prepare a proposed fee schedule and submit the schedule with the accompanying economic analysis to the Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.''.

(b) DEPOSIT OF FEES.—Section 708(d) of such title is amended to read as follows:

''(d)(1) Except as provided in paragraph (2), all fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

''(2) In the case of fees deposited against future services, the Register of Copyrights shall request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the fees that, as determined by the Register, is not required to meet current deposit account demands. Funds from such portion of fees shall be invested in securities that permit funds to be available to the Copyright Office at all times if they are determined to be necessary to meet current deposit account demands. Such investments shall be in public debt securities with maturities suitable to the needs of the Copyright Office, as determined by the Register of Copyrights, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

''(3) The income on such investments shall be deposited in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office.''.

SEC. 9. COPYRIGHT ARBITRATION ROYALTY PANELS.

(a) ESTABLISHMENT AND PURPOSE.—Section 801 of title 17, United States Code, is amended—

(1) in subsection (b)(1) by striking ''and 116'' in the first sentence and inserting ''116, and 119'';

(2) in subsection (c) by inserting after ''panel'' at the end of the sentence the following:

'', including—

''(1) authorizing the distribution of those royalty fees collected under sections 111, 119, and 1005 that the Librarian has found are not subject to controversy; and

''(2) accepting or rejecting royalty claims filed under sections 111, 119, and 1007 on the basis of timeliness or the failure to establish the basis for a claim''; and

(3) by amending subsection (d) to read as follows:

''(d) SUPPORT AND REIMBURSEMENT OF ARBITRATION PANELS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter, and shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. Each such arbitrator is an independent contractor acting on behalf of the United States, and shall be hired pursuant to a signed agreement between the Library of Congress and the arbitrator. Payments to the arbitrators shall be considered costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).''.

(b) PROCEEDINGS.—Section 802 of title 17, United States Code, is amended—

(1) in subsection (c) by striking the last sentence; and

(2) in subsection (h) by amending paragraph (1) to read as follows:

''(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY FEES.—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants. In addition, all funds made available by an appropriations Act as offsetting collections and available for deductions under this subsection shall remain available until expended. In ratemaking proceedings, the Librarian of Congress and the Copyright Office may assess their reasonable costs directly to the parties to the most recent relevant arbitration proceeding, 50 percent of the costs to the parties who would receive royalties from the royalty rate adopted in the proceeding and 50 percent of the costs to the parties who would pay the royalty rate so adopted.''.

SEC. 10. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Section 1007(b) of title 17, United States Code, is amended by striking ''Within 30 days after'' in the first sentence and inserting ''After''.

SEC. 11. CONFORMING AMENDMENT.

Section 4 of the Digital Performance Right in Sound Recordings Act of 1995 (Public Law 104–39) is amended by redesignating paragraph (5) as paragraph (4).

SEC. 12. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—Title 17, United States Code, is amended as follows:

(1) The table of chapters at the beginning of title 17, United States Code, is amended—

(A) in the item relating to chapter 6, by striking ''**Requirement**'' and inserting ''**Requirements**'';

(B) in the item relating to chapter 8, by striking ''**Royalty Tribunal**'' and inserting ''**Arbitration Royalty Panels**'';

(C) in the item relating to chapter 9, by striking ''**semiconductor chip products**'' and inserting ''**Semiconductor Chip Products**''; and

(D) by inserting after the item relating to chapter 9 the following:

''10. Digital Audio Recording Devices and Media ..... 1001''.

(2) The item relating to section 117 in the table of sections at the beginning of chapter 1 is amended to read as follows:

''117. Limitations on exclusive rights: Computer programs.''.

(3) Section 101 is amended in the definition of to perform or display a work ''publicly'' by striking ''processs'' and inserting ''process''.

(4) Section 108(e) is amended by striking ''pair'' and inserting ''fair''.

(5) Section 109(a)(2)(B) is amended by striking ''Copyright'' and inserting ''Copyrights''.

(6) Section 110 is amended—

(A) in paragraph (8) by striking the period at the end and inserting a semicolon;

(B) in paragraph (9) by striking the period at the end and inserting ''; and''; and

(C) in paragraph (10) by striking ''4 above'' and inserting ''(4)''.

(7) Section 115(c)(3)(E) is amended—

(A) in clause (i) by striking ''section 106(1) and (3)'' each place it appears and inserting ''paragraphs (1) and (3) of section 106''; and

(B) in clause (ii)(II) by striking ''sections 106(1) and 106(3)'' and inserting ''paragraphs (1) and (3) of section 106''.

(8) Section 119(c)(1) is amended by striking ''unless until'' and inserting ''unless''.

(9) Section 304(c) is amended in the matter preceding paragraph (1) by striking ''the subsection (a)(1)(C)'' and inserting ''subsection (a)(1)(C)''.

(10) Section 405(b) is amended by striking ''condition or'' and inserting ''condition for''.

(11) Section 407(d)(2) is amended by striking ''cost of'' and inserting ''cost to''.

(12) The item relating to section 504 in the table of sections at the beginning of chapter 5 is amended by striking ''Damage'' and inserting ''Damages''.

(13) Section 504(c)(2) is amended by striking ''court it'' and inserting ''court in''.

(14) Section 509(b) is amended by striking ''merchandise; and baggage'' and inserting ''merchandise, and baggage''.

(15) Section 601(a) is amended by striking ''nondramtic'' and inserting ''nondramatic''.

(16) Section 601(b)(1) is amended by striking ''subsustantial'' and inserting ''substantial''.

(17) The item relating to section 710 in the table of sections at the beginning of chapter 7 is amended by striking ''Reproductions'' and inserting ''Reproduction''.

(18) The item relating to section 801 in the table of sections at the beginning of chapter 8 is amended by striking ''establishment'' and inserting ''Establishment''.

(19) Section 801(b) is amended—

(A) by striking ''shal be—'' and inserting ''shall be as follows:'';

(B) in paragraph (1) by striking ''to make'' and inserting ''To make'';

(C) in paragraph (2)—

(i) by striking ''to make'' and inserting ''To make''; and

(ii) in subparagraph (D) by striking ''adjustment; and'' and inserting ''adjustment.''; and

(D) in paragraph (3) by striking ''to distribute'' and inserting ''To distribute''.

(20) Section 803(b) is amended in the second sentence by striking ''subsection subsection'' and inserting ''subsection''.

(21) The item relating to section 903 in the table of sections at the beginning of chapter 9 is amended to read as follows:

''903. Ownership, transfer, licensure, and recordation.''.

(22) Section 909(b)(1) is amended—

(A) by striking ''force'' and inserting ''work''; and

(B) by striking ''sumbol'' and inserting ''symbol''.

(23) Section 910(a) is amended in the second sentence by striking ''as used'' and inserting ''As used''.

(24) Section 1006(b)(1) is amended by striking ''Federation Television'' and inserting ''Federation of Television''.

(25) Section 1007 is amended—

(A) in subsection (a)(1) by striking ''The calendar year in which this chapter takes effect'' and inserting ''calendar year 1992''; and

(B) in subsection (b) by striking ''the year in which this section takes effect'' and inserting ''1992''.

(b) RELATED PROVISIONS.—

(1) Section 1(a)(1) of the Act entitled ''An Act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities'', approved November 9, 1987 (17 U.S.C. 914 note), is amended by striking ''orginating'' and inserting ''originating''.

(2) Section 2319(b)(1) of title 18, United States Code, is amended by striking ''last 10'' and inserting ''least 10''.

SEC. 13. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) SATELLITE HOME VIEWER ACT OF 1994.—The amendments made by section 2 shall be effective as if enacted as part of the Satellite Home Viewer Act of 1994 (Public Law 103–369).

(c) TECHNICAL AMENDMENT.—The amendment made by section 12(b)(1) shall be effective as if enacted on November 9, 1987.

SUMMARY OF PROVISIONS—COPYRIGHT CLARIFICATION ACT OF 1997 (S. 506)

The Copyright Clarification Act is intended to make several technical, yet important, changes to Copyright law, as suggested by the U.S. Copyright Office. The following is a brief summary of its provisions.

Satellite Home Viewer Act Technical Amendments. Section 2 makes technical corrections to the Satellite Home Viewer Act of 1994 (SHVA), as recommended by the Copyright Office. First, the bill corrects the dollar figures specified in the Act for royalties to be paid by satellite carriers—the 1994 SHVA amendments mistakenly reversed the rates set by arbitration in 1992 for signals subject to FCC syndicated exclusivity blackout rules vs. those that are not subject to such rules. Second, the bill corrects errors in section numbers and references resulting from the failure of the 1994 SHVA amendments to account for changes made to Title 17 by the Copyright Royalty Tribunal Act of 1993. Third, the bill replaces references to ''the effective date of the Satellite Home Viewer Act of 1988'' with the actual calendar date so as to avoid confusion caused by the two Acts bearing the same name.

Copyright Restoration. Section 3 clarifies ambiguities and corrects drafting errors in the Copyright Restoration Act, which was enacted as part of the 1994 Uruguay Round Agreements Act to restore copyright protection in the U.S. for certain works from WTO member countries that had fallen into the public domain. First, the bill corrects a drafting error that precludes U.S. creators of derivative works from continuing to exploit those works if copyright protection in the underlying foreign work is restored under GATT. Second, the bill eliminates a duplicative reporting requirement. Third, the bill clarifies Congress' intent that the effective date of restoration is January 1, 1996 (not 1995 as interpreted by some commentators). Fourth, the bill clarifies the definition of ''eligible country'' as it pertains to limited rights of continued exploitation for those who rely on public domain works that were restored under GATT. An ambiguous reference in the original bill left open the possible interpretation that a party would not qualify as a ''reliance party'' where reliance had not predated adherence to the Berne Convention for the country of origin—a date that goes as far back as 1886 for many countries.

Digital Performance Right in Sound Recordings. Section 4 ensures that the effective rates under the 1995 digital performance rights bill will not lapse. That bill requires new rates to be established during 2000, and the 1996 rates are to expire at the end of 2000. In the case where the copyright arbitration royalty panel (CARP) does not complete its work by the end of the year, or where the Librarian of Congress does not complete its review of the CARP's report by the end of the year, this section provides that the 1996 rates will continue beyond the December 31, 2000, expiration date until 30 days after the Librarian publishes a decision to adopt or reject the CARP's rate adjustment. This section (as well as provisions in Section 5) also eliminates authorization for a CARP to publish its report in the Federal Register since only federal agencies are permitted to do so. Instead, CARP decisions will be published by the Librarian. Section 11 corrects a numbering mistake in the 1995 Digital Performance Right bill.

Negotiated Jukebox License. Section 6 restores the definitions of a ''jukebox'' and a ''jukebox operator'' to §116A of Title 17. These definitions were mistakenly eliminated from the old §116 jukebox compulsory license when that section was replaced by the current §116A negotiated jukebox license in the 1988 Berne Convention implementing legislation. This section also clarifies that all jukebox negotiated licenses that require arbitration are CARP proceedings.

Advance Notice of Intent to Copyright Live Performances. Section 7 changes the current 10-days advanced notice requirement for a copyright owner who intends to copyright the fixation of a live performance to a 48-hours advanced notice requirement. The current provision has proven unworkable for sporting events, in particular, where the teams and times of the event may not be known 10 days in advance.

Copyright Office Fees. Section 8 responds to ambiguities in the Copyright Fees and Technical Amendments Act of 1989. That bill allows the Copyright Office to increase fees in 1995, and every fifth year thereafter to reflect changes in the Consumer Price Index (CPI). The Copyright Office did not raise its fees in 1995, because it determined that the costs associated with the increase would be greater than the resulting revenue. Uncertainty has arisen as to whether the failure to increase fees in 1995 precludes the Copyright Office from increasing its fees again until 2000 and whether the increase in the CPI to be used in calculating the fee increase is the increase since the last fee settlement (1990) or only that since 1995. The bill clarifies that the Copyright Office may increase its fees in any given year, provided it has not done so within the last five years, and that the fees may be increased up to the amount required to cover the reasonable costs incurred by the Copyright Office plus a reasonable inflation adjustment to account for future increases in costs. The bill also allows the Register of Copyrights to invest funds from the prepaid fees in interest bearing securities in the U.S. Treasury and to use the income from those investments for Copyright Office expenses. It is expected that the proceeds will be used for the development of the Copyright Office's new electronic registration, recordation, and deposit system.

Copyright Arbitration Royalty Panels (CARPs). Section 9 clarifies administrative issues regarding the operation of the CARPs. First, it gives the Librarian of Congress express authority to pay panel members directly in ratemaking and distribution proceedings and clarifies that these arbitrators are independent contractors acting on behalf of the U.S. (thus subject to laws governing the conduct of government employees). Second, it clarifies that copyright owners and users are responsible for equal shares of the costs of ratemaking proceedings. Third, it clarifies by way of example the procedural and evidentiary rulings the Librarian of Congress can issue with respect to CARP proceedings. Fourth, it clarifies that the 1997 ratemaking proceeding for the satellite carrier compulsory license is a CARP proceeding.

Digital Audio Recording Devices. Section 10 provides added flexibility for the Librarian of Congress in setting the negotiation period for the distribution of digital audio recording technology (DART) royalties, with the intention of promoting settlements and timely distribution of royalties. The current March 30 annual deadline for determining whether there exist controversies among claimants has proven unworkable and is eliminated by this section.

Miscellaneous Technical Amendments. Section 12 makes various technical corrections, such as spelling, grammatical, capitalization, and other corrections, to title 17.

S. 507

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 ''Omnibus Patent Act of 1997''.

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TITLE I—UNITED STATES PATENT AND TRADEMARK ORGANIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''United States Patent and Trademark Organization Act of 1997''.

Subtitle A—Establishment of the United States Patent and Trademark Organization

SEC. 111. ESTABLISHMENT OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION AS A GOVERNMENT CORPORATION.

(a) ESTABLISHMENT.—The United States Patent and Trademark Organization is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department, and shall be an agency of the United States under the policy direction of the Secretary of Commerce.

(b) OFFICES.—The United States Patent and Trademark Organization shall maintain its principal office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and for the purpose of carrying out its powers, duties, and obligations under this title. The United States Patent and Trademark Organization shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Organization may establish satellite offices in such places as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, a reference to the ''Organization'' shall be a reference to the United States Patent and Trademark Organization, unless the context provides otherwise.

SEC. 112. POWERS AND DUTIES.

(a) IN GENERAL.—The United States Patent and Trademark Organization, under the policy direction of the Secretary of Commerce, shall be responsible for—

(1) the granting and issuing of patents and the registration of trademarks;

(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law, the administration of the Organization, or any other function vested in the Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

(3)(A) authorizing or conducting studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and

(B) with the concurrence of the Secretary of State, authorizing the transfer of not to exceed $100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters; and

(4) disseminating to the public information with respect to patents and trademarks.

(b) SPECIAL PAYMENTS.—The special payments under subsection (a)(3)(B) may be in addition to any other payments or contributions to international organizations and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(c) SPECIFIC POWERS.—The Organization—

(1) shall have perpetual succession;

(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Organization shall be authenticated;

(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 116;

(4) may indemnify the Director of the United States Patent and Trademark Organization, the Commissioner of Patents, the Commissioner of Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Boards of the Patent Office and the Trademark Office) of the Organization for liabilities and expenses incurred within the scope of their employment;

(5) may adopt, amend, and repeal bylaws, rules, regulations, and determinations, which—

(A) shall govern the manner in which its business will be conducted and the powers granted to it by law will be exercised; and

(B) shall be made after notice and opportunity for full participation by interested public and private parties;

(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.), and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Organization, without regard to sections 501 through 517 and 1101 through 1123 of title 44, United States Code;

(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Organization;

(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(10) may use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

(11) may determine the character of, and the necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of title 35, United States Code and the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946);

(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Organization, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

(13) shall have the priority of the United States with respect to the payment of debts

from bankrupt, insolvent, and decedents' estates;

(14) may accept monetary gifts or donations of services, or of real, personal, or mixed property, in order to carry out the functions of the Organization;

(15) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.

(d) CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Organization.

SEC. 113. ORGANIZATION AND MANAGEMENT.

(a) OFFICES.—The United States Patent and Trademark Organization shall consist of—

(1) the Office of the Director;

(2) the United States Patent Office; and

(3) the United States Trademark Office.

(b) DIRECTOR.—

(1) IN GENERAL.—The management of the United States Patent and Trademark Organization shall be vested in a Director of the United States Patent and Trademark Organization (hereafter in this title referred to as the ''Director'', unless the context provides otherwise), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who, by reason of professional background and experience in patent or trademark law, is especially qualified to manage the Organization.

(2) DUTIES.—(A) The Director shall—

(i) be responsible for the Management and direction of the Organization and shall perform this duty in a fair, impartial, and equitable manner; and

(ii) strive to meet the goals set forth in the performance agreement described under paragraph (4).

(B) The Director shall advise the President, through and under the policy direction of the Secretary of Commerce, of all activities of the Organization undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Director shall also recommend to the President, through and under the policy direction of the Secretary of Commerce, changes in law or policy which may improve the ability of United States citizens to secure and enforce patent and trademark rights in the United States or in foreign countries.

(C)(i) At the direction of the President, the Director may represent the United States in international negotiations on matters of patents or trademarks, or may designate an officer or officers of the Organization to participate in such negotiations.

(ii) Nothing in this subparagraph shall be construed to alter any statutory responsibility of the Secretary of State or the United States Trade Representative.

(D) The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

(E) The Director may perform such personnel, procurement, and other functions, with respect to the United States Patent Office and the United States Trademark Office, where a centralized administration of such functions would improve the efficiency of the Offices, as determined by agreement of the Director, the Commissioner of Patents, and the Commissioner of Trademarks.

(F) Except as otherwise provided in this title, the Director shall ensure that—

(i) the United States Patent Office and the United States Trademark Office, respectively, shall—

(I) prepare all appropriation requests under section 1108 of title 31, United States Code, for each office for submission by the Director;

(II) adjust fees to provide sufficient revenues to cover the expenses of such office; and

(III) expend funds derived from such fees for only the functions of such office; and

(ii) each such office is not involved in the management of any other office.

(3) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Organization.

(4) COMPENSATION.—The Director shall receive compensation at the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code and, in addition, may receive as a bonus, an amount which would raise total compensation to the equivalent of the level of the rate of pay in effect for level II of the Executive Schedule under section 5313 of title 5, based upon an evaluation by the Secretary of Commerce of the Director's performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable goals as delineated in an annual performance plan agreed to by the Director and the Secretary.

(5) REMOVAL.—The Director shall serve at the pleasure of the President.

(6) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Organization who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.

(c) OFFICERS AND EMPLOYEES OF THE ORGANIZATION.—

(1) COMMISSIONERS OF PATENTS AND TRADEMARKS.—The Director shall appoint a Commissioner of Patents and a Commissioner of Trademarks under section 3 of title 35, United States Code and section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), respectively, as amended by this Act.

(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

(A) appoint officers, employees (including attorneys), and agents of the Organization as the Director considers necessary to carry out its functions;

(B) fix the compensation of such officers and employees, except as provided in subsection (e); and

(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Organization as the Director may determine.

(3) PERSONNEL LIMITATIONS.—The Organization shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Organization shall be taken into account for purposes of applying any such limitation.

(d) LIMITS ON COMPENSATION.—Except as otherwise provided by law, the annual rate of basic pay of an officer or employee of the Organization may not be fixed at a rate that exceeds, and total compensation payable to any such officer or employee for any year may not exceed, the annual rate of basic pay in effect for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Director shall prescribe such regulations as may be necessary to carry out this subsection.

(e) INAPPLICABILITY OF TITLE 5, UNITED STATES CODE, GENERALLY.—Except as otherwise provided in this section, officers and employees of the Organization shall not be subject to the provisions of title 5, United States Code, relating to Federal employees.

(f) CONTINUED APPLICABILITY OF CERTAIN PROVISION OF TITLE 5, UNITED STATES CODE.—

(1) IN GENERAL.—The following provisions of title 5, United States Code, shall apply to the Organization and its officers and employees:

(A) Section 3110 (relating to employment of relatives; restrictions).

(B) Subchapter II of chapter 55 (relating to withholding pay).

(C) Subchapters II and III of chapter 73 (relating to employment limitations and political activities, respectively).

(D) Chapter 71 (relating to labor-management relations), subject to paragraph (2) and subsection (g).

(E) Section 3303 (relating to political recommendations).

(F) Subchapter II of chapter 61 (relating to flexible and compressed work schedules).

(G) Section 21302(b)(8) (relating to whistleblower protection) and whistleblower related provisions of chapter 12 (covering the role of the Office of Special Counsel).

(2) COMPENSATION SUBJECT TO COLLECTIVE BARGAINING.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of applying chapter 71 of title 5, United States Code, pursuant to paragraph (1)(D), basic pay and other forms of compensation shall be considered to be among the matters as to which the duty to bargain in good faith extends under such chapter.

(B) EXCEPTIONS.—The duty to bargain in good faith shall not, by reason of subparagraph (A), be considered to extend to any benefit under title 5, United States Code, which is afforded by paragraph (1), (2), (3), or (4) of subsection (g).

(C) LIMITATIONS APPLY.—Nothing in this subsection shall be considered to allow any limitation under subsection (d) to be exceeded.

(g) PROVISIONS OF TITLE 5, UNITED STATES CODE, THAT CONTINUE TO APPLY, SUBJECT TO CERTAIN REQUIREMENTS.—

(1) RETIREMENT.—(A) The provisions of subchapter III of chapter 83 and chapter 84 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) The amount required of the Organization under the second sentence of section 8334(a)(1) of title 5, United States Code, with respect to any particular individual shall, instead of the amount which would otherwise apply, be equal to the normal-cost percentage (determined with respect to officers and employees of the Organization using dynamic assumptions, as defined by section 8401(9) of such title) of the individual's basic pay, minus the amount required to be withheld from such pay under such section 8334(a)(1).

(ii) The amount required of the Organization under section 8334(k)(1)(B) of title 5, United States Code, with respect to any particular individual shall be equal to an amount computed in a manner similar to that specified in clause (i), as determined in accordance with clause (iii).

(iii) Any regulations necessary to carry out this subparagraph shall be prescribed by the Office of Personnel Management.

(C) The United States Patent and Trademark Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(2) HEALTH BENEFITS.—(A) The provisions of chapter 89 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) With respect to any individual who becomes an officer or employee of the Organization pursuant to subsection (i), the eligibility of such individual to participate in such program as an annuitant (or of any other person to participate in such program as an annuitant based on the death of such individual) shall be determined disregarding the requirements of section 8905(b) of title 5, United States Code. The preceding sentence shall not apply if the individual ceases to be an officer or employee of the Organization for any period of time after becoming an officer or employee of the Organization pursuant to subsection (i) and before separation.

(ii) The Government contributions authorized by section 8906 of title 5, United States Code, for health benefits for anyone participating in the health benefits program pursuant to this subparagraph shall be made by the Organization in the same manner as provided under section 8906(g)(2) of such title with respect to the United States Postal Service for individuals associated therewith.

(iii) For purposes of this subparagraph, the term ''annuitant'' has the meaning given such term by section 8901(3) of title 5, United States Code.

(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(3) LIFE INSURANCE.—(A) The provisions of chapter 87 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) Eligibility for life insurance coverage after retirement or while in receipt of compensation under subchapter I of chapter 81 of title 5, United States Code, shall be determined, in the case of any individual who becomes an officer or employee of the Organization pursuant to subsection (i), without regard to the requirements of section 8706(b)(1) or (2) of such title, but subject to the condition specified in the last sentence of paragraph (2)(B)(i) of this subsection.

(ii) Government contributions under section 8708(d) of such title on behalf of any such individual shall be made by the Organization in the same manner as provided under paragraph (3) thereof with respect to the United States Postal Service for individuals associated therewith.

(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(4) EMPLOYEES' COMPENSATION FUND.—(A) Officers and employees of the Organization shall not become ineligible to participate in the program under chapter 81 of title 5, United States Code, relating to compensation for work injuries, by reason of subsection (e).

(B) The Organization shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the effective date of this title in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(h) LABOR-MANAGEMENT RELATIONS.—

(1) LABOR RELATIONS AND EMPLOYEE RELATIONS PROGRAMS.—The Organization shall develop hiring practices, labor relations and employee relations programs with the objective of improving productivity and efficiency, incorporating the following principles:

(A) Such programs shall be consistent with the merit principles in section 2301(b) of title 5, United States Code.

(B) Such programs shall provide veterans preference protections equivalent to those established by sections 2108, 3308 through 3318, 3320, 3502, and 3504 of title 5, United States Code.

(C)(i) The right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

(ii) No person shall be required, as a condition of employment or continuation of employment—

(I) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(II) to become or remain a member of a labor organization;

(III) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;

(IV) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or

(V) to be recommended, approved, referred, or cleared by or through a labor organization.

(iii) This subparagraph shall not apply to a person described in section 7103(a)(2)(v) of title 5, United States Code, or a ''supervisor'', ''management official'', or ''confidential employee'' as those terms are defined in 7103(a) (10), (11), and (13) of such title.

(iv) Any labor organization recognized by the Organization as the exclusive representative of a unit of employees of the Organization shall represent the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(2) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Organization shall adopt all labor agreements which are in effect, as of the day before the effective date of this title, with respect to such Organization (as then in effect).

(i) CARRYOVER OF PERSONNEL.—

(1) FROM PTO.—Effective as of the effective date of this title, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Organization, without a break in service.

(2) OTHER PERSONNEL.—(A) Any individual who, on the day before the effective date of this title, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Organization if—

(i) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

(ii) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent's work time, as determined by the Secretary of Commerce; or

(iii) such transfer would be in the interest of the Organization, as determined by the Secretary of Commerce in consultation with the Director.

(B) Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

(3) ACCUMULATED LEAVE.—The amount of sick and annual leave and compensatory time accumulated under title 5, United States Code, before the effective date described in paragraph (1), by any individual who becomes an officer or employee of the Organization under this subsection, are obligations of the Organization.

(4) TERMINATION RIGHTS.—Any employee referred to in paragraph (1) or (2) of this subsection whose employment with the Organization is terminated during the 1-year period beginning on the effective date of this title shall be entitled to rights and benefits, to be afforded by the Organization, similar to those such employee would have had under Federal law if termination had occurred immediately before such date. An employee who would have been entitled to appeal any such termination to the Merit Systems Protection Board, if such termination had occurred immediately before such effective date, may appeal any such termination occurring within such 1-year period to the Board under such procedures as it may prescribe.

(5) TRANSITION PROVISIONS.—(A)(i) On or after the effective date of this title, the President shall appoint a Director of the United States Patent and Trademark Organization who shall serve until the earlier of—

(I) the date on which a Director qualifies under subsection (a); or

(II) the date occurring 1 year after the effective date of this title.

(ii) The President shall not make more than 1 appointment under this subparagraph.

(B) The individual serving as the Assistant Commissioner of Patents on the day before the effective date of this title shall serve as the Commissioner of Patents until the date on which a Commissioner of Patents is appointed under section 3 of title 35, United States Code, as amended by this Act.

(C) The individual serving as the Assistant Commissioner of Trademarks on the day before the effective date of this title shall serve as the Commissioner of Trademarks until the date on which a Commissioner of Trademarks is appointed under section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), as amended by this Act.

(j) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Organization is qualified, such officer or employee shall not forfeit any competitive status, acquired by such officer or employee before the effective date of this title, by reason of becoming an officer or employee of the Organization under subsection (i).

(k) SAVINGS PROVISIONS.—Compensation, benefits, and other terms and conditions of employment in effect immediately before the effective date of this title, whether provided by statute or by rules and regulations of the former Patent and Trademark Office or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Organization, until changed in accordance with this section (whether by action of the Director or otherwise).

(l) REMOVAL OF QUASI-JUDICIAL EXAMINERS.—The Organization may remove a patent examiner or examiner-in-chief, or a trademark examiner or member of a Trademark Trial and Appeal Board only for such cause as will promote the efficiency of the Organization.

SEC. 114. UNITED STATES PATENT OFFICE.

(a) ESTABLISHMENT OF THE PATENT OFFICE AS A SEPARATE ADMINISTRATIVE UNIT.—Section 1 of title 35, United States Code, is amended to read as follows:

''§ 1. Establishment

''(a) ESTABLISHMENT.—The United States Patent Office is established as a separate administrative unit of the United States Patent and Trademark Organization, where

records, books, drawings, specifications, and other papers and things pertaining to patents shall be kept and preserved, except as otherwise provided by law.

''(b) REFERENCE.—For purposes of this title, the United States Patent Office shall also be referred to as the 'Office' and the 'Patent Office'.''.

(b) POWERS AND DUTIES.—Section 2 of title 35, United States Code, is amended to read as follows:

"§ 2. Powers and duties

''The United States Patent Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

''(1) granting and issuing patents;

''(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent law, the administration of the Organization, or any other function vested in the Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

''(3) authorizing or conducting studies and programs cooperatively with foreign patent offices and international organizations, in connection with the granting and issuing of patents; and

''(4) disseminating to the public information with respect to patents.

(c) ORGANIZATION AND MANAGEMENT.—Section 3 of title 35, United States Code, is amended to read as follows:

"§ 3. Officers and employees

''(a) COMMISSIONER.—

''(1) IN GENERAL.—The management of the United States Patent Office shall be vested in a Commissioner of Patents, who shall be a citizen of the United States and who shall be appointed by the Director of the United States Patent and Trademark Organization and shall serve at the pleasure of the Director of the United States Patent and Trademark Organization. The Commissioner of Patents shall be a person who, by reason of professional background and experience in patent law, is especially qualified to manage the Office.

''(2) DUTIES.—

''(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, including the granting and issuing of patents, and shall perform these duties in a fair, impartial, and equitable manner.

''(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents. The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization on matters of patent law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce patent rights in the United States or in foreign countries.

''(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.

''(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Management Advisory Board established in section 5—

''(I) on a regular basis on matters relating to the operation of the Office; and

''(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change patent user fees or patent regulations.

''(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.

''(3) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

''(4) COMPENSATION.—

''(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5.

''(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

''(b) OFFICERS AND EMPLOYEES.—The Commissioner shall appoint a Deputy Commissioner of Patents who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office. Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.''.

(d) MANAGEMENT ADVISORY BOARD.—Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

"§ 5. Patent Office Management Advisory Board

''(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

''(1) APPOINTMENT.—The United States Patent Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Advisory Board') of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party.

''(2) CHAIR.—The President shall designate a Chair of the Advisory Board, whose term as chair shall be for 3 years.

''(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1997. Vacancies shall be filled in the manner in which the original appointment was made under this subsection within 3 months after they occur.

''(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent Office, and shall include individuals with substantial background and achievement in corporate finance and management.

''(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.

''(d) DUTIES.—The Advisory Board shall—

''(1) review the policies, goals, performance, budget, and user fees of the United States Patent Office, and advise the Commissioner on these matters;

''(2) within 60 days after the end of each fiscal year—

''(A) prepare an annual report on the matters referred to in paragraph (1);

''(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

''(C) publish the report in the Patent Office Official Gazette.

''(f) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from such member's home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

''(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.''.

(e) CONFORMING AMENDMENTS.—Section 6 of title 35, United States Code, and the item relating to such section in the table of contents for chapter 1 of title 35, United States Code, are repealed.

(f) BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 7 of title 35, United States Code, is amended to read as follows:

"§ 7. Board of Patent Appeals and Interferences

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent Office a Board of Patent Appeals and Interferences. The Commissioner, the Deputy Commissioner, and the examiners-in-chief shall constitute the Board. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability.

''(b) DUTIES.—

''(1) IN GENERAL.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, a patent owner, or a third-party requester in a reexamination proceeding—

''(A) review adverse decisions of examiners—

''(i) upon applications for patents; and

''(ii) in reexamination proceedings; and

''(B) determine priority and patentability of invention in interferences declared under section 135(a).

''(2) HEARINGS.—Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Deputy Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.''.

(g) ANNUAL REPORT OF COMMISSIONER.—Section 14 of title 35, United States Code, is amended to read as follows:

"§ 14. Annual report to Congress

''The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to submit to Congress annually under chapter 91 of title 31, including—

''(1) the total of the moneys received and expended by the Office;

''(2) the purposes for which the moneys were spent;

''(3) the quality and quantity of the work of the Office; and

''(4) other information relating to the Office.''.

(h) PRACTICE BEFORE PATENT OFFICE.—

(1) IN GENERAL.—Section 31 of title 35, United States Code, is amended to read as follows:

''§ 31. Regulations for agents and attorneys

''The Commissioner may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office. The regulations may require such persons, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.''.

(2) DESIGNATION OF ATTORNEY TO CONDUCT HEARING.—Section 32 of title 35, United States Code, is amended in the first sentence by striking ''Patent and Trademark Office'' and inserting ''Patent Office'' and by inserting before the last sentence the following: ''The Commissioner shall have the discretion to designate any attorney who is an officer or employee of the United States Patent Office to conduct the hearing required by this section.''.

(i) FUNDING.—

(1) ADJUSTMENT OF FEES.—Section 41(f) of title 35, United States Code, is amended to read as follows:

''(f) The Commissioner, after consulting with the Patent Office Management Advisory Board pursuant to section 3(a)(2)(C) of this title and after notice and opportunity for full participation by interested public and private parties, may, by regulation, adjust the fees established in this section. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.''.

(2) PATENT OFFICE FUNDING.—Section 42 of title 35, United States Code, is amended to read as follows:

''§ 42. Patent Office funding

''(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent Office shall be payable to the Office.

''(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this title shall be used only for the processing of patent applications and for other services and materials relating to patents.

''(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Patent Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.''.

SEC. 115. UNITED STATES TRADEMARK OFFICE.

(a) ESTABLISHMENT OF THE UNITED STATES TRADEMARK OFFICE AS A SEPARATE ADMINISTRATIVE UNIT.—The Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) by redesignating titles X and XI as titles XI and XII, respectively;

(2) by redesignating sections 45, 46, 47, 48, 49, 50, and 51 as sections 61, 71, 72, 73, 74, 75, and 76, respectively; and

(3) by inserting after title IX the following new title:

''TITLE X—UNITED STATES TRADEMARK OFFICE

''SEC. 51. ESTABLISHMENT.

''(a) ESTABLISHMENT.—The United States Trademark Office is established as a separate administrative unit of the United States Patent and Trademark Organization.

''(b) REFERENCE.—For purposes of this chapter, the United States Trademark Office shall also be referred to as the 'Office' and the 'Trademark Office'.

''SEC. 52. POWERS AND DUTIES.

''The United States Trademark Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

''(1) the registration of trademarks;

''(2) conducting studies, programs, or exchanges of items or services regarding domestic and international trademark law or the administration of the Office;

''(3) authorizing or conducting studies and programs cooperatively with foreign trademark offices and international organizations, in connection with the registration of trademarks; and

''(4) disseminating to the public information with respect to trademarks.

''SEC. 53. OFFICERS AND EMPLOYEES.

''(a) COMMISSIONER.—

''(1) IN GENERAL.—The management of the United States Trademark Office shall be vested in a Commissioner of Trademarks, who shall be a citizen of the United States and who shall be appointed by the Director of the United States Patent and Trademark Organization and shall serve at the pleasure of the Director of the United States Patent and Trademark Organization. The Commissioner of Trademarks shall be a person who, by reason of professional background and experience in trademark law, is especially qualified to manage the Office.

''(2) DUTIES.—

''(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, including the registration of trademarks, and shall perform these duties in a fair, impartial, and equitable manner.

''(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for registering trademarks. The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization on matters of trademark law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce trademark rights in the United States or in foreign countries.

''(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Trademark Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.

''(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Trademark Office Management Advisory Board established under section 54—

''(I) on a regular basis on matters relating to the operation of the Office; and

''(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change trademark user fees or trademark regulations.

''(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.

''(E) PUBLICATIONS.—(i) The Commissioner may print, or cause to be printed, the following:

''(I) Certificates of trademark registrations, including statements and drawings, together with copies of the same.

''(II) The Official Gazette of the United States Trademark Office.

''(III) Annual indexes of trademarks and registrants.

''(IV) Annual volumes of decisions in trademark cases.

''(V) Pamphlet copies of laws and rules relating to trademarks and circulars or other publications relating to the business of the Office.

''(ii) The Commissioner may exchange any of the publications specified under clause (i) for publications desirable for the use of the Trademark Office.

''(3) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.

''(4) COMPENSATION.—

''(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

''(b) OFFICERS AND EMPLOYEES.—The Commissioner shall appoint a Deputy Commissioner of Trademarks who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office. Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.

''SEC. 54. TRADEMARK OFFICE MANAGEMENT ADVISORY BOARD.

''(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

''(1) APPOINTMENT.—The United States Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Advisory Board') of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party.

''(2) CHAIR.—The President shall designate a Chair of the Advisory Board, whose term as chair shall be for 3 years.

''(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be

made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1997. Vacancies shall be filled in the manner in which the original appointment was made under this section within 3 months after they occur.

''(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

''(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.

''(d) DUTIES.—The Advisory Board shall—

''(1) review the policies, goals, performance, budget, and user fees of the United States Trademark Office, and advise the Commissioner on these matters; and

''(2) within 60 days after the end of each fiscal year—

''(A) prepare an annual report on the matters referred to under paragraph (1);

''(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

''(C) publish the report in the Trademark Office Official Gazette.

''(f) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code, and while away from such member's home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

''(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Trademark Office, except for personnel or other privileged information.

''SEC. 55. ANNUAL REPORT TO CONGRESS.

''The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to report to Congress annually under chapter 91 of title 5, including—

''(1) the moneys received and expended by the Office;

''(2) the purposes for which the moneys were spent;

''(3) the quality and quantity of the work of the Office; and

''(4) other information relating to the Office.

''SEC. 56. TRADEMARK OFFICE FUNDING.

''(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Trademark Office shall be payable to the Office.

''(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Trademark Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this chapter shall be used only for the registration of trademarks and for other services and materials relating to trademarks.

''(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Trademark Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.''.

(b) TRADEMARK TRIAL AND APPEAL BOARD.—Section 17 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1067) is amended to read as follows:

''SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

''(b) The Trademark Trial and Appeal Board shall include the Commissioner of Trademarks, the Deputy Commissioner of Trademarks, and members competent in trademark law who are appointed by the Commissioner.''.

(c) DETERMINATION OF FEES.—Section 31(a) of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1067(a)) is amended by striking the second and third sentences and inserting the following: ''Fees established under this subsection may be adjusted by the Commissioner, after consulting with the Trademark Office Management Advisory Board in accordance with section 53(a)(2)(C) of this Act and after notice and opportunity for full participation by interested public and private parties. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.''.

SEC. 116. SUITS BY AND AGAINST THE ORGANIZATION.

(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Organization is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Organization.

(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Organization shall be deemed an agency of the United States for purposes of section 516 of title 28, United States Code.

(c) PROHIBITION ON ATTACHMENT, LIENS, OR SIMILAR PROCESS.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Organization.

SEC. 117. FUNDING.

(a) IN GENERAL.—The activities of the United States Patent and Trademark Organization and each office of the Organization shall be funded entirely through fees payable to the United States Patent Office (under section 42 of title 35, United States Code) and the United States Trademark Office (under section 56 of the Act of July 5, 1946 (commonly known as the Trademark Act of 1946)), and surcharges appropriated by Congress, to the extent provided in appropriations Acts and subject to the provisions of subsection (b).

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The United States Patent and Trademark Organization is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as ''obligations'') to assist in financing the activities of the United States Patent Office and the United States Trademark Office. Borrowing under this section shall be subject to prior approval in appropriations Acts. Such borrowing shall not exceed amounts approved in appropriations Acts.

(2) BORROWING AUTHORITY.—Any borrowing under this subsection shall be repaid only from fees paid to the Office for which such obligations were issued and surcharges appropriated by Congress. Such obligations shall be redeemable at the option of the United States Patent and Trademark Organization before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the United States Patent and Trademark Organization with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury.

(3) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase any obligations of the United States Patent and Trademark Organization issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter are extended to include such purpose.

(4) TREATMENT.—Payment under this subsection of the purchase price of such obligations of the United States Patent and Trademark Organization shall be treated as public debt transactions of the United States.

SEC. 118. TRANSFERS.

(a) TRANSFER OF FUNCTIONS.—Except as relates to the direction of patent and trademark policy, there are transferred to, and vested in, the United States Patent and Trademark Organization all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the United States Patent and Trademark Organization, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to functions, powers, and duties which are vested in the United States Patent and Trademark Office by this title.

Subtitle B—Effective Date; Technical Amendments

SEC. 131. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 4 months after the date of the enactment of this Act.

SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

(1) TABLE OF PARTS.—The item relating to part I in the table of parts for title 35, United States Code, is amended to read as follows:

''I. United States Patent Office ..... 1.''.

(2) HEADING.—The heading for part I of title 35, United States Code, is amended to read as follows:

"PART I—UNITED STATES PATENT OFFICE".

(3) TABLE OF CHAPTERS.—The table of chapters for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

"1. Establishment, Officers and Employees, Functions ..... 1".

(4) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

"CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

''Sec.
''1. Establishment.
''2. Powers and duties.
''3. Officers and employees.
''4. Restrictions on officers and employees as to interest in patents.
''5. Patent Office Management Advisory Board.
''6. Duties of Commissioner.
''7. Board of Patent Appeals and Interferences.
''8. Library.
''9. Classification of patents.
''10. Certified copies of records.
''11. Publications.
''12. Exchange of copies of patents with foreign countries.
''13. Copies of patents for public libraries.
''14. Annual report to Congress.''.

(5) COMMISSIONER OF PATENTS AND TRADEMARKS.—(A) Section 41(h)(1) of title 35, United States Code, is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Commissioner''.

(B) Section 155 of title 35, United States Code, is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Commissioner''.

(C) Section 155A(c) of title 35, United States Code, is amended by striking ''Commissioner of Patents'' and inserting ''Commissioner''.

(6) PATENT AND TRADEMARK OFFICE.—The provisions of title 35, United States Code, are amended by striking ''Patent and Trademark Office'' each place it appears and inserting ''Patent Office''.

(b) AMENDMENTS TO THE TRADEMARK ACT OF 1946.—

(1) REFERENCES.—All amendments in this subsection refer to the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946).

(2) AMENDMENTS RELATING TO COMMISSIONER.—Section 61 (as redesignated by section 115(a)(2) of this Act) is amended by striking the undesignated paragraph relating to the definition of the term ''Commissioner'' and inserting the following:

''The term 'Commissioner' means the Commissioner of Trademarks.''.

(3) AMENDMENTS RELATING TO PATENT AND TRADEMARK OFFICE.—(A) Section 1(a)(1) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(B) Section 1(a)(2) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(C) Section 1(b)(1) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(D) Section 1(b)(2) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(E) Section 1(d)(1) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(F) Section 1(e) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(G) Section 2(d) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(H) Section 7(a) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(I) Section 7(d) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(J) Section 7(e) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(K) Section 7(f) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(L) Section 7(g) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(M) Section 8(a) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(N) Section 8(b) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(O) Section 10 is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(P) Section 12(a) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(Q) Section 13(a) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(R) Section 13(b)(1) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(S) Section 15(2) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(T) Section 17 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(U) Section 21(a)(2) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(V) Section 21(a)(3) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(W) Section 21(a)(4) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(X) Section 21(b)(3) is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(Y) Section 21(b)(4) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(Z) Section 24 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(AA) Section 29 is amended by striking ''Patent and Trademark Office'' each place such term appears and inserting ''Trademark Office''.

(BB) Section 30 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(CC) Section 31(a) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(DD) Section 34(a) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(EE) Section 34(d)(1)(B)(i) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(FF) Section 35(a) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(GG) Section 36 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(HH) Section 37 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(II) Section 38 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(JJ) Section 39(b) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(KK) Section 41 is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(LL) Section 61 (as redesignated under section 115(a)(2) of this Act) is amended in the undesignated paragraph relating to the definition of ''registered mark''—

(i) by striking ''Patent and Trade Mark Office'' and inserting ''Trademark Office; and

(ii) by striking ''Patent and Trade Office'' and inserting ''Trademark Office''.

(MM) Section 72(a) (as redesignated under section 115(a)(2) of this Act) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(NN) Section 75 (as redesignated under section 115(a)(2) of this Act) is amended by striking ''Patent and Trademark Office'' and inserting ''Trademark Office''.

(c) AMENDMENTS TO TITLE 5.—Section 5316 of title 5, United States Code, is amended—

(1) by striking ''Commissioner of Patents, Department of Commerce.''; and

(2) by striking:

''Deputy Commissioner of Patents and Trademarks.

''Assistant Commissioner for Patents.

''Assistant Commissioner for Trademarks.''.

(d) AMENDMENT TO TITLE 31.—Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

''(O) the United States Patent and Trademark Organization.''.

(e) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1) by striking ''or the Commissioner of Social Security, Social Security Administration;'' and inserting ''the Commissioner of Social Security, Social Security Administration; or the Director of the United States Patent and Trademark Organization, United States Patent and Trademark Organization;''; and

(2) in paragraph (2) by striking ''or the Veterans' Administration, or the Social Security Administration;'' and inserting ''the Veterans' Administration, the Social Security Administration, or the United States Patent and Trademark Organization;''.

Subtitle C—Miscellaneous Provisions

SEC. 141. REFERENCES.

Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—

(1) to the head of such department, agency, or office is deemed to refer to the head of the department, agency, or office to which such function is transferred; or

(2) to such department, agency, or office is deemed to refer to the department, agency, or office to which such function is transferred.

SEC. 142. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of

that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 143. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges that—

(1) have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.

SEC. 144. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

SEC. 145. DELEGATION AND ASSIGNMENT.

(a) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may—

(1) delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate; and

(2) authorize successive redelegations of such functions as may be necessary or appropriate.

(b) RESPONSIBILITY FOR ADMINISTRATION.—No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title.

(c) TERMINATION OF AFFAIRS.—The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

For purposes of this title, the vesting of a function in a department, agency, or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

SEC. 148. AVAILABILITY OF EXISTING FUNDS.

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities.

SEC. 149. DEFINITIONS.

For purposes of this title—

(1) the term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

TITLE II—EARLY PUBLICATION OF PATENT APPLICATIONS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Patent Application Publication Act of 1997''.

SEC. 202. EARLY PUBLICATION.

Section 122 of title 35, United States Code, is amended to read as follows:

''§ 122. Confidential status of applications; publication of patent applications

''(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Commissioner.

''(b) PUBLICATION.—

''(1) IN GENERAL.—(A) Subject to paragraph (2), each application for patent, except applications for design patents filed under chapter 16 of this title and provisional applications filed under section 111(b) of this title, shall be published, in accordance with procedures determined by the Commissioner, as soon as possible after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.

''(B) No information concerning published patent applications shall be made available to the public except as the Commissioner determines.

''(C) Notwithstanding any other provision of law, a determination by the Commissioner to release or not to release information concerning a published patent application shall be final and nonreviewable.

''(2) EXCEPTIONS.—(A) An application that is no longer pending shall not be published.

''(B) An application that is subject to a secrecy order pursuant to section 181 of this title shall not be published.

''(C)(i) Upon the request of the applicant at the time of filing, the application shall not be published in accordance with paragraph (1) until 3 months after the Commissioner makes a notification to the applicant under section 132 of this title.

''(ii) Applications filed pursuant to section 363 of this title, applications asserting priority under section 119 or 365(a) of this title, and applications asserting the benefit of an earlier application under section 120, 121, or 365(c) of this title shall not be eligible for a request pursuant to this subparagraph.

''(iii) In a request under this subparagraph, the applicant shall certify that the invention disclosed in the application was not and will not be the subject of an application filed in a foreign country.

''(iv) The Commissioner may establish appropriate procedures and fees for making a request under this subparagraph.

''(c) PRE-ISSUANCE OPPOSITION.—The provisions of this section shall not operate to create any new opportunity for pre-issuance opposition. The Commissioner may establish appropriate procedures to ensure that this section does not create any new opportunity for pre-issuance opposition that did not exist prior to the adoption of this section.''.

SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FILING DATE.

(a) IN A FOREIGN COUNTRY.—Section 119(b) of title 35, United States Code, is amended to read as follows:

''(b)(1) No application for patent shall be entitled to this right of priority unless a claim, identifying the foreign application by specifying its application number, country, and the day, month, and year of its filing, is filed in the Patent Office at such time during the pendency of the application as required by the Commissioner.

''(2) The Commissioner may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim,

and may require the payment of a surcharge as a condition of accepting an untimely claim during the pendency of the application.

''(3) The Commissioner may require a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Commissioner considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.''.

(b) IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended by adding at the end the following: ''The Commissioner may determine the time period during the pendency of the application within which an amendment containing the specific reference to the earlier filed application is submitted. The Commissioner may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Commissioner may establish procedures, including the payment of a surcharge, to accept unavoidably late submissions of amendments under this section.''.

SEC. 204. PROVISIONAL RIGHTS.

Section 154 of title 35, United States Code, is amended—

(1) in the section caption by inserting ''**; provisional rights**'' after ''**patent**''; and

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

''(d) PROVISIONAL RIGHTS.—

''(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to section 122(b) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

''(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

''(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

''(B) had actual notice of the published patent application, and where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

''(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

''(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

''(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—

''(A) EFFECTIVE DATE.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty of an international application designating the United States shall commence from the date that the Patent Office receives a copy of the publication under the treaty defined in section 351(a) of this title of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent Office receives a translation of the international application in the English language.

''(B) COPIES.—The Commissioner may require the applicant to provide a copy of the international application and a translation thereof.''.

SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.

Section 102(e) of title 35, United States Code, is amended to read as follows:

''(e) the invention was described in—

''(1)(A) an application for patent, published pursuant to section 122(b) of this title, by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) of this title shall have the effect under this subsection of a national application published under section 122(b) of this title only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language, or

''(B) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, or''.

SEC. 206. COST RECOVERY FOR PUBLICATION.

The Commissioner shall recover the cost of early publication required by the amendment made by section 202 by adjusting the filing, issue, and maintenance fees under title 35, United States Code, by charging a separate publication fee, or by any combination of these methods.

SEC. 207. CONFORMING CHANGES.

The following provisions of title 35, United States Code, are amended:

(1) Section 11 is amended in paragraph 1 of subsection (a) by inserting ''and published applications for patents'' after ''Patents''.

(2) Section 12 is amended—

(A) in the section caption by inserting ''**and applications**'' after ''**patents**''; and

(B) by inserting ''and published applications for patents'' after ''patents''.

(3) Section 13 is amended—

(A) in the section caption by inserting ''**and applications**'' after ''**patents**''; and

(B) by inserting ''and published applications for patents'' after ''patents''.

(4) The items relating to sections 12 and 13 in the table of sections for chapter 1 are each amended by inserting ''and applications'' after ''patents''.

(5) The item relating to section 122 in the table of sections for chapter 11 is amended by inserting ''; publication of patent applications'' after ''applications''.

(6) The item relating to section 154 in the table of sections for chapter 14 is amended by inserting ''; provisional rights'' after ''patent''.

(7) Section 181 is amended—

(A) in the first undesignated paragraph—

(i) by inserting ''by the publication of an application or'' after ''disclosure''; and

(ii) ''the publication of the application or'' after ''withhold'';

(B) in the second undesignated paragraph by inserting ''by the publication of an application or'' after ''disclosure of an invention'';

(C) in the third undesignated paragraph—

(i) by inserting ''by the publication of the application or'' after ''disclosure of the invention''; and

(ii) ''the publication of the application or'' after ''withhold''; and

(D) in the fourth undesignated paragraph by inserting ''the publication of an application or'' after ''and'' in the first sentence.

(8) Section 252 is amended in the first undesignated paragraph by inserting ''substantially'' before ''identical'' each place it appears.

(9) Section 284 is amended by adding at the end of the second undesignated paragraph the following: ''Increased damages under this paragraph shall not apply to provisional rights under section 154(d) of this title.''.

(10) Section 374 is amended to read as follows:

''§374. Publication of international application: Effect

''The publication under the treaty, defined in section 351(a) of this title, of an international application designating the United States shall confer the same rights and shall have the same effect under this title as an application for patent published under section 122(b), except as provided in sections 102(e) and 154(d) of this title.''.

SEC. 208. LAST DAY OF PENDENCY OF PROVISIONAL APPLICATION.

Section 119(e) of title 35, United States Code, is amended by adding at the end the following:

''(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or legal holiday as defined in rule 6(a) of the Federal Rules of Civil Procedure, the period of pendency of the provisional application shall be extended to the next succeeding business day.''.

SEC. 209. EFFECTIVE DATE.

(a) SECTIONS 202 THROUGH 207.—Sections 202 through 207, and the amendments made by such sections, shall take effect on April 1, 1998, and shall apply to all applications filed under section 111 of title 35, United States Code, on or after that date, and all applications complying with section 371 of title 35, United States Code, that resulted from international applications filed on or after that date. The amendment made by section 204 shall also apply to international applications designating the United States that are filed on or after April 1, 1998.

(b) SECTION 208.—The amendments made by section 208 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

TITLE III—PATENT TERM RESTORATION

SEC. 301. PATENT TERM EXTENSION AUTHORITY.

Section 154(b) of title 35, United States Code, is amended to read as follows:

''(b) TERM EXTENSION.—

''(1) BASIS FOR PATENT TERM EXTENSION.—

''(A) DELAY.—Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to—

''(i) a proceeding under section 135(a) of this title;

''(ii) the imposition of an order pursuant to section 181 of this title;

''(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court where the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; or

''(iv) an unusual administrative delay by the Patent Office in issuing the patent,

the term of the patent shall be extended for the period of delay.

''(B) ADMINISTRATIVE DELAY.—For purposes of subparagraph (A)(iv), an unusual administrative delay by the Patent Office is the failure to—

''(i) make a notification of the rejection of any claim for a patent or any objection or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;

''(ii) respond to a reply under section 132 of this title or to an appeal taken under section 134 of this title not later than 4 months after the date on which the reply was filed or the appeal was taken;

''(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title where allowable claims remain in an application; or

''(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied.

''(2) LIMITATIONS.—

''(A) IN GENERAL.—The total duration of any extensions granted pursuant to either subclause (iii) or (iv) of paragraph (1)(A) or both such subclauses shall not exceed 10 years. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any extension granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

''(B) REDUCTION OF EXTENSION.—The period of extension of the term of a patent under this subsection shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Commissioner shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.

''(C) DISCLAIMED TERM.—No patent the term of which has been disclaimed beyond a specified date may be extended under this section beyond the expiration date specified in the disclaimer.

''(3) PROCEDURES.—The Commissioner shall prescribe regulations establishing procedures for the notification of patent term extensions under this subsection and procedures for contesting patent term extensions under this subsection.''.

SEC. 302. EFFECTIVE DATE.

The amendments made by section 301 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

TITLE IV—PRIOR DOMESTIC COMMERCIAL USE

SEC. 401. SHORT TITLE.

This title may be cited as the ''Prior Domestic Commercial Use Act of 1997''.

SEC. 402. DEFENSE TO PATENT INFRINGEMENT BASED ON PRIOR DOMESTIC COMMERCIAL USE.

(a) DEFENSE.—Chapter 28 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 273. Prior domestic commercial use; defense to infringement

''(a) DEFINITIONS.—For purposes of this section—

''(1) the terms 'commercially used', 'commercially use', and 'commercial use' mean the use in the United States in commerce or the use in the design, testing, or production in the United States of a product or service which is used in commerce, whether or not the subject matter at issue is accessible to or otherwise known to the public;

''(2) the terms 'used in commerce', and 'use in commerce' mean that there has been an actual sale or other commercial transfer of the subject matter at issue or that there has been an actual sale or other commercial transfer of a product or service resulting from the use of the subject matter at issue; and

''(3) the 'effective filing date' of a patent is the earlier of the actual filing date of the application for the patent or the filing date of any earlier United States, foreign, or international application to which the subject matter at issue is entitled under section 119, 120, or 365 of this title.

''(b) DEFENSE TO INFRINGEMENT.—

''(1) IN GENERAL.—A person shall not be liable as an infringer under section 271 of this title with respect to any subject matter that would otherwise infringe one or more claims in the patent being asserted against such person, if such person had, acting in good faith, commercially used the subject matter before the effective filing date of such patent.

''(2) EXHAUSTION OF RIGHT.—The sale or other disposition of the subject matter of a patent by a person entitled to assert a defense under this section with respect to that subject matter shall exhaust the patent owner's rights under the patent to the extent such rights would have been exhausted had such sale or other disposition been made by the patent owner.

''(c) LIMITATIONS AND QUALIFICATIONS OF DEFENSE.—The defense to infringement under this section is subject to the following:

''(1) DERIVATION.—A person may not assert the defense under this section if the subject matter on which the defense is based was derived from the patentee or persons in privity with the patentee.

''(2) NOT A GENERAL LICENSE.—The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the subject matter claimed in the patent with respect to which the person can assert a defense under this chapter, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

''(3) EFFECTIVE AND SERIOUS PREPARATION.—With respect to subject matter that cannot be commercialized without a significant investment of time, money, and effort, a person shall be deemed to have commercially used the subject matter if—

''(A) before the effective filing date of the patent, the person reduced the subject matter to practice in the United States, completed a significant portion of the total investment necessary to commercially use the subject matter, and made a commercial transaction in the United States in connection with the preparation to use the subject matter; and

''(B) thereafter the person diligently completed the remainder of the activities and investments necessary to commercially use the subject matter, and promptly began commercial use of the subject matter, even if such activities were conducted after the effective filing date of the patent.

''(4) BURDEN OF PROOF.—A person asserting the defense under this section shall have the burden of establishing the defense.

''(5) ABANDONMENT OF USE.—A person who has abandoned commercial use of subject matter may not rely on activities performed before the date of such abandonment in establishing a defense under subsection (b) with respect to actions taken after the date of such abandonment.

''(6) PERSONAL DEFENSE.—The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

''(7) ONE-YEAR LIMITATION.—A person may not assert a defense under this section unless the subject matter on which the defense is based had been commercially used or reduced to practice more than one year prior to the effective filing date of the patent by the person asserting the defense or someone in privity with that person.

''(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney's fees under section 285 of this title.

''(e) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 of this title solely because a defense is established under this section.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 28 of title 35, United States Code, is amended by adding at the end the following new item:

''Sec. 273. Prior domestic commercial use; defense to infringement.''.

SEC. 403. EFFECTIVE DATE AND APPLICABILITY.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act, but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.

TITLE V—PATENT REEXAMINATION REFORM

SEC. 501. SHORT TITLE.

This title may be cited as the ''Patent Reexamination Reform Act of 1997''.

SEC. 502. DEFINITIONS.

Section 100 of title 35, United States Code, is amended by adding at the end the following new subsection:

''(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner.''.

SEC. 503. REEXAMINATION PROCEDURES.

(a) REQUEST FOR REEXAMINATION.—Section 302 of title 35, United States Code, is amended to read as follows:

''§ 302. Request for reexamination

''(a) IN GENERAL.—Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title or on the basis of the requirements of section 112 of this title except for the requirement to set forth the best mode of carrying out the invention.

''(b) REQUIREMENTS.—The request shall—

''(1) be in writing, include the identity of the real party in interest, and be accompanied by payment of a reexamination fee established by the Commissioner of Patents pursuant to the provisions of section 41 of this title; and

''(2) set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested or the manner in which the patent specification or claims fail to comply with the requirements of section 112 of this title.

''(c) COPY.—Unless the requesting person is the owner of the patent, the Commissioner promptly shall send a copy of the request to the owner of record of the patent.''.

(b) DETERMINATION OF ISSUE BY COMMISSIONER.—Section 303 of title 35, United States Code, is amended to read as follows:

''§ 303. Determination of issue by Commissioner

''(a) REEXAMINATION.—Not later than 3 months after the filing of a request for reexamination under the provisions of section 302 of this title, the Commissioner shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On the Commissioner's initiative, and any time, the Commissioner may determine whether a substantial new question of patentability is raised by patents and publications or by the failure of the patent specification or claims to comply with the requirements of section 112 of this title except for the best mode requirement described in section 302.

''(b) RECORD.—A record of the Commissioner's determination under subsection (a) shall be placed in the official file of the patent, and a copy shall be promptly given or mailed to the owner of record of the patent and to the third-party requester, if any.

''(c) FINAL DECISION.—A determination by the Commissioner pursuant to subsection (a) shall be final and nonappealable. Upon a determination that no substantial new question of patentability has been raised, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title.''.

(c) REEXAMINATION ORDER BY COMMISSIONER.—Section 304 of title 35, United States Code, is amended to read as follows:

''§ 304. Reexamination order by Commissioner

''If, in a determination made under the provisions of section 303(a) of this title, the Commissioner finds that a substantial new question of patentability affecting a claim of a patent is raised, the determination shall include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial action of the Patent Office on the merits of the reexamination conducted in accordance with section 305 of this title.''.

(d) CONDUCT OF REEXAMINATION PROCEEDINGS.—Section 305 of title 35, United States Code, is amended to read as follows:

''§ 305. Conduct of reexamination proceedings

''(a) IN GENERAL.—Subject to subsection (b), reexamination shall be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner shall be permitted to propose any amendment to the patent and a new claim or claims, except that no proposed amended or new claim enlarging the scope of the claims of the patent shall be permitted.

''(b) RESPONSE.—(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a request by a third-party requester.

''(2) With the exception of the reexamination request, any document filed by either the patent owner or the third-party requester shall be served on the other party.

''(3) If the patent owner files a response to any Patent Office action on the merits, the third-party requester shall have 1 opportunity to file written comments within a reasonable period not less than 1 month after the date of service of the patent owner's response. Written comments provided under this paragraph shall be limited to issues covered by the Patent Office action or the patent owner's response.

''(c) SPECIAL DISPATCH.—Unless otherwise provided by the Commissioner for good cause, all reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, shall be conducted with special dispatch within the Office.''.

(e) APPEAL.—Section 306 of title 35, United States Code, is amended to read as follows:

''§ 306. Appeal

''(a) PATENT OWNER.—The patent owner involved in a reexamination proceeding under this chapter—

''(1) may appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent, and

''(2) may be a party to any appeal taken by a third-party requester pursuant to subsection (b) of this section.

''(b) THIRD-PARTY REQUESTER.—A third-party requester may—

''(1) appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent; or

''(2) be a party to any appeal taken by the patent owner, subject to subsection (c) of this section.

''(c) PARTICIPATION AS PARTY.—

''(1) IN GENERAL.—A third-party requester who, under the provisions of sections 141 through 144 of this title, files a notice of appeal or who participates as a party to an appeal by the patent owner is estopped from asserting at a later time, in any forum, the invalidity of any claim determined to be patentable on appeal on any ground which the third-party requester raised or could have raised during the reexamination proceedings.

''(2) ELECTION TO PARTICIPATE.—A third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, not later than 20 days after the patent owner has filed notice of appeal, the third-party requester files notice with the Commissioner electing to participate.''.

(f) REEXAMINATION PROHIBITED.—

(1) IN GENERAL.—Chapter 30 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 308. Reexamination prohibited

''(a) ORDER FOR REEXAMINATION.—Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued and published under section 307 of this title, unless authorized by the Commissioner.

''(b) FINAL DECISION.—Once a final decision has been entered against a party in a civil action arising in whole or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action, and a reexamination requested by that party or its privies on the basis of such issues may not thereafter be maintained by the Office, notwithstanding any other provision of this chapter.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 30 of title 35, United States Code, is amended by adding at the end the following:

''308. Reexamination prohibited.''.

SEC. 504. CONFORMING AMENDMENTS.

(a) PATENT FEES; PATENT SEARCH SYSTEMS.—Section 41(a)(7) of title 35, United States Code, is amended to read as follows:

''(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in a reexamination proceeding, $1,250, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be $110.''.

(b) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 134 of title 35, United States Code, is amended to read as follows:

''§ 134. Appeal to the Board of Patent Appeals and Interferences

''(a) PATENT APPLICANT.—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

''(b) PATENT OWNER.—A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

''(c) THIRD-PARTY.—A third-party requester may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.''.

(d) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: ''An applicant, a patent owner, or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit.''.

(e) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: ''In ex parte and reexamination cases, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent Office, addressing all the issues involved in the appeal.''.

(f) CIVIL ACTION TO OBTAIN PATENT.—Section 145 of title 35, United States Code, is amended in the first sentence by inserting ''(a)'' after ''section 134''.

SEC. 505. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date that is 6 months after the date of the enactment of this Act and shall apply to all reexamination requests filed on or after such date.

TITLE VI—MISCELLANEOUS PATENT PROVISIONS

SEC. 601. PROVISIONAL APPLICATIONS.

(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

''(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Commissioner, a provisional application may be treated as an application filed under subsection (a). If no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to a provisional application filed on or after June 8, 1995.

SEC. 602. INTERNATIONAL APPLICATIONS.

Section 119 of title 35, United States Code, is amended as follows:

(1) In subsection (a), insert ''or in a WTO member country'' after ''or to citizens of the United States,''.

(2) At the end of section 119 add the following new subsections:

''(f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

''(g) As used in this section—

''(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and

''(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants.''.

SEC. 603. PLANT PATENTS.

(a) TUBER PROPAGATED PLANTS.—Section 161 of title 35, United States Code, is amended by striking ''a tuber propagated plant or''.

(b) RIGHTS IN PLANT PATENTS.—The text of section 163 of title 35, United States Code, is amended to read as follows: ''In the case of a plant patent, the grant to the patentee, such patentee's heirs or assigns, shall have the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.''.

(c) EFFECTIVE DATE.—The amendments by subsection (a) shall apply on the date of enactment of this Act. The amendments made by subsection (b) shall apply to any plant patent issued on or after the date of enactment of this Act.

SEC. 604. ELECTRONIC FILING.

Section 22 of title 35, United States Code, is amended by striking ''printed or typewritten'' and inserting ''printed, typewritten, or on an electronic medium'' .

OMNIBUS PATENT ACT OF 1997—SUMMARY

TITLE I—THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION

This title establishes the United States Patent and Trademark Organization (USPTO) as a wholly owned government corporation connected for policy-making purposes to the Department of Commerce. Like the existing U.S. Patent and Trademark Office, the USPTO is charged with patent and trademark policy formulation and the administration of the patent and trademark systems. But unlike the present structure, the USPTO will be freed from a heavy-handed federal bureaucracy, which inhibits the ability of the Patent and Trademark Office to meet the demands of those who fully sustain its operation through user fees. Heightened efficiency is also achieved by separating the policymaking functions from the day-to-day operating functions.

The USPTO is headed by a Director of the U.S. Patent and Trademark Office, who is charged with advising the President through the Secretary of Commerce regarding patent and trademark policy. He or she is appointed by the President with Senate confirmation, and he or she serves at the pleasure of the President.

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

TITLE II—EARLY PUBLICATION

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

TITLE III—PATENT TERM RESTORATION

Title III deals with the problem of administrative delay in the patent examination process by restoring to the patent holder any part of the term that is lost due to undue administrative delay. Title III gives clear deadlines in which the Patent Office must act. The office has fourteen months to issue a first office action and four months to respond to subsequent applicant filings. Any delay beyond those deadlines is considered undue delay and will be restored to the patent term.

TITLE IV—PRIOR DOMESTIC COMMERCIAL USE

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

TITLE V—PATENT RE-EXAMINATION REFORM

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

TITLE VI—MISCELLANEOUS

Provisional Applications for Patents

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

Plant Patents

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

Electronic Filing

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

By Mrs. FEINSTEIN:

S. 508. A bill to provide Mai Hoa ''Jasmin'' Salehi permanent residency; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mrs. FEINSTEIN. Mr. President, this bill grants permanent residency status to Jasmin Salehi, a California constituent who is currently assisting the LA district attorney with the prosecution of her husband's murderer.

Mai Hoa Jasmin Salehi is a Korean immigrant who was denied permanent residency after her husband was violently murdered at a Denny's in Reseda, CA, where he worked as manager. Local INS officials in Los Angeles denied Jasmin's application because the law requires legal immigrants be married for 2 years before they become eligible for permanent resident status. Jasmin and Cyrus Salehi were newlyweds who had been married only 11 months before the murder.

I have previously sought administrative relief for Jasmin by asking the INS if any humanitarian exemptions could be made in Jasmin's case, but the local INS officials in Los Angeles has told my staff that there is nothing they can do.

Jasmin met and married Cyrus Salehi, an American citizen, in March 1995 and has completed all the paperwork necessary to obtain her green card. But now, Jasmin has been told that she can stay in the United States as long as the district attorney needs her to prosecute her husband's murderer. Despite here assistance in the prosecution, Jasmin would be deported once the investigation and subsequent trial are completed.

Jasmin has done everything right in order to become a permanent resident of this country—except for the tragedy of her husband's murder 13 months before she could become a permanent resident. I hope you support this bill so that we can help Jasmin begin to rebuild her life in the United States.

Mr. President, I ask for unanimous consent that the attached news article and the bill be entered into the RECORD.

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

S. 508

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

I. Permanent Residence:

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Mai Hoa ''Jasmin'' Salehi, shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees.

[From the Los Angeles Daily News]

WIDOW'S TROUBLES MULTIPLY

(By Jeannette DeSantis)

Things have gotten worse instead of better for Jasmin Salehi.

Alone in a new apartment, half of her belongings still packed in moving boxes, Salehi, 32, surveys her new residence and wonders how it came to this.

When the Korean widow first came to the United States more than a year ago, her life was filled with promise. A loving husband with a steady income, friends and a comfortable home in Sherman Oaks were more that she could ask for.

Then life handed her more.

Her husband of 11 months, Cyrus Salehi, was slain earlier this year. Soon after, the Immigration and Naturalization Service notified Salehi she would be deported because she had not been married to a U.S. citizen long enough to get her green card.

And recently, she was evicted from the only home she has known since arriving in the United States.

''All these things happened at one time,'' Salehi said. ''It is really hard for me, and I get depresses . . . especially during the holidays.''

In the midst of her first holiday season as a widow, Salehi can only dream of her husband, Cyrus Salehi, killed in February after two robbers shot him during a holdup at the Reseda Denny's restaurant he owned.

''There are lots of memories of my husband . . . and our Christmases together,'' she said. ''Now, every Christmas will be a Christmas without him.''

But it won't be a holiday season without friends.

Francine and Ralph Myers, who informally adopted Salehi since Cyrus's death, met her through a victim support group. The Myers, whose son was slain, know well how those first holiday seasons can affect a victim of crime.

''It can be a real tough time,'' Francine Myers said. ''It is different for everyone. Jasmin doesn't want to decorate. I remember (after my son died) I would try to change every tradition we had and make new ones.''

Myers said Salehi is a survivor, who stood up to the INS and was allowed to stay in the country until her husband's accused killer stands trial. Meanwhile, she has not let her own grief stop her from helping others.

''Although she needs help, she unselfishly helps others,'' Myers said, adding that Salehi has accompanied her to the trial of the person accused of murdering her own son. ''That says something about her.''

Salehi contends that she is only returning the support the Myers have given her. ''She is a victim too, and all that time she is there for me,'' Salehi said.

Shellie Samuels, the deputy district attorney handling the Cyrus Salehi murder case, said that although all victims of crime are traumatized by a loved one's death, Salehi's ordeal has been especially nightmarish.

''Besides the emotional trauma she has gone through, the U.S. has not done right by her,'' Samuels said. ''Her American citizen husband gets killed and they treat her like an illegal immigrant.''

Cyrus and Jasmin Salehi filed the paperwork for Salehi to receive a green card in early 1995, soon after their March nuptials.

But Salehi was deemed ineligible for residence status because her husband was killed before they had been married two years—an INS time requirement for a spouse sponsorship.

The INS has only offered Salehi a temporary reprieve, allowing her to stay in the country for her husband's murder trial.

As for Salehi, she fears if she is sent back to Korea, she will be a stranger in her own country, a place where stigmas are attached to orphans and widows, of which she is both.

Born Mai Hoa Joo in Seoul, Korea, in 1964, Salehi's parents died within months of each other when she was 14. A college graduate, Salehi visited the United States several times before she immigrated.

During a 1993 visit, Salehi met her husband at a Denny's restaurant in Los Angeles. They continued their relationship even as Salehi returned to Korea.

Once married, Salehi received a work permit after she applied for a green card and began working at a clothing manufacturer in downtown Los Angeles, where she still puts in 10-hour days on a regular basis.

But her salary as a production manager was not enough to cover the mortgage payment on the small house the couple owned, even though she has inherited part ownership of the Denny's restaurant where her husband was killed.

''She has run into a lot of roadblocks, but she is a survivor,'' said Francine Myers. ''She will do all right as long as she feels like she has the support behind her.''

By Mr. BURNS:

S. 509 A bill to provide for the return of certain program and activity fund rejected by States to the Treasury to reduce the Federal deficit, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

THE FAIR AND RESPONSIBLE FUND USE ACT

Mr. BURNS. Mr. President, I rise to introduce the Fair and Responsible Fund Use Act. It is a bill that will provide for the return of funds, rejected by a State, to the Treasury. These funds will then be used specifically to reduce the Federal deficit.

Sometimes the Federal Government makes available to Montana, and other States, funds which are inconsistent with State priorities. Usually this money comes with strings attached. In other words, the Federal Government wants us to take X action to get Y dollars. Sometimes, out of fiscal conservatism, or philosophical differences, States will return that money to the Treasury. But what has been the reward for an individual State's refusal to grab the Federal carrot that has been dangled in front of it? That money is returned to the program for use by other States.

That's just not right. California or New York should not be the beneficiaries of Montana's restraint and good judgment. The good people of Montana have asked me to take action to stop this from happening and that's why I am introducing this bill today. The Fair and Responsible Fund Use Act will require that we take those funds returned by the States and use them to pay down our national deficit.

Montana and 48 other States are required by law to balance their budgets. While we came one vote short of making that the standard for this Nation, most of us here in Washington are still determine to balance our books. If a State has the courage and willingness to do without a quick Federal buck, then it's only right that the American people, as a whole, should benefit from that action.

Whatever the States send back may seem like small potatoes to some people, but as the late Senator Everett Dirksen once said, ''A billion here, and a billion there, and pretty soon you're talking about real money.''

We face the very real danger of being crushed by our national deficit. Some of our mindless spending in the past years has left us with a debt of 5.34 trillion dollars— ''trillion'' with a capital ''T.'' And it's only going to get worse if we don't do something to help out.

This bill makes good common sense. We all must work together in order to pay off the huge national deficit and this is one step in the right direction. I urge my colleagues to support this legislation.

By Mr. MOYNIHAN:

S. 510. A bill to authorize the Architect of the Capitol to develop and implement a plan to improve the Capitol grounds through the elimination and modification of space allocated for parking; to the Committee on Rules and Administration.

THE ARC OF PARK CAPITOL GROUNDS IMPROVEMENT ACT OF 1997

Mr. MOYNIHAN. Mr. President, nearly 100 years ago, in March of 1901, the Senate Committee on the District of Columbia was directed by Senate Resolution to ''report to the Senate plans for the development and improvement of the entire park system of the District of Columbia * * * (F)or the purpose of preparing such plans the committee * * * may secure the services of such experts as may be necessary for a proper consideration of the subject.''

And secure ''such experts'' the committee assuredly did. The Committee formed what came to be known as the McMillan Commission, named for committee chairman Senator James McMillan of Michigan. The Commission's membership was a ''who's who'' of late 19th and 20th-century architecture, landscape design, and art: Daniel Burnham, Frederick Law Olmsted Jr., Charles F. McKim, and Augustus St. Gaudens. The Commission traveled that summer to Rome, Venice, Vienna, Budapest, Paris, and London, studying the landscapes, architecture, and public spaces of the grandest cities in the world. The McMillan Commission returned and fashioned the city of Washington as we now know it.

We are particularly indebted today for the Commission's preservation of the Mall. When the members left for Europe, the Congress had just given the Pennsylvania Railroad a 400-foot wide swath of the Mall for a new station and trackage. It is hard to imagine our city without the uninterrupted stretch of greenery from the Capitol to the Washington Monument, but such would have been the result. Fortunately, when in London, Daniel

Burnham was able to convince Pennsylvania Railroad president Alexander Cassatt that a site on Massachusetts Avenue would provide a much grander entrance to the city. President Cassatt assented and Daniel Burnham gave us Union Station.

But the focus of the Commission's work was the District's park system. The Commission noted in its report:

Aside from the pleasure and the positive benefits to health that the people derive from public parks, in a capital city like Washington there is a distinct use of public spaces as the indispensable means of giving dignity to Government buildings and of making suitable connections between the great departments * * * [V]istas and axes; sites for monuments and museums; parks and pleasure gardens; fountains and canals; in a word all that goes to make a city a magnificent and consistent work of art were regarded as essential in the plans made by L'Enfant under the direction of the first President and his Secretary of State.

Washington and Jefferson might be disappointed at the affliction now imposed on much of the Capitol Grounds by the automobile.

Despite the ready and convenient availability of the city's Metrorail system, an extraordinary number of Capitol Hill employees drive to work. No doubt many must. But must we provide free parking? If there is one lesson learned from the Intermodal Surface Transportation Efficiency Act of 1991, it is that free goods are always wasted. Free parking is a powerful incentive to drive to work when the alternative is to pay for public transportation. As we have created parking spaces around the Capitol, such as the scar of angle-parked cars at the foot of Pennsylvania Avenue made available ''temporarily'' during construction of the Thurgood Marshall Federal Judiciary Building, demand has simply risen to meet the available supply. The result—the Pennsylvania Avenue spaces have become permanent and a portion of the Nation's main street remains an aesthetic disaster.

Today, I am reintroducing legislation to complete the beautification of the Capitol Grounds, as envisioned by the illustrious McMillan Commission in 1901, through the elimination of most surface parking and restoration of the sites as public parks. The Arc of Park Capitol Grounds Improvement Act of 1997 would require the Architect of the Capitol to develop and implement a comprehensive plan to improve the Capitol Grounds through the creation of an ''arc of park,'' sweeping from Second Street, NE to the Capitol Reflecting Pool and back to First Street, SE, with the Capitol Building as its approximate center. Delaware Avenue between Columbus Circle and Constitution Avenue would be closed to traffic and rebuilt as a grand pedestrian walkway from Union Station to the Capitol. The angled parking would be eliminated on Pennsylvania Avenue between First and Third Streets, NW, and the Pennsylvania Avenue tree line would be continued onto the Capitol Grounds.

There is, of course, the matter of parking. This legislation authorizes the Architect of the Capitol to construct underground parking facilities, as needed. These facilities, which will undoubtedly be expensive, will be financed simply by charging for the parking. A legitimate user fee. In the matter of parking, this legislation is an appropriate companion to a bill that my colleague from Rhode Island, Senator CHAFEE, and I introduced earlier today, which will enable employers to provide their employees with cash compensation in lieu of a parking space. This bill, which was also included in the Administration's ISTEA reauthorization proposal, will expand employee options for commuting and reduce auto use.

By Mr. CHAFEE (for himself, Mr. ROCKEFELLER, Mr. JEFFORDS, Mr. DEWINE, Mr. DODD, Ms. MOSELEY-BRAUN, Mr. KERRY, Mr. KERREY, and Mr. KENNEDY):

S. 511. A bill to require that the health and safety of a child be considered in any foster care or adoption placement, to eliminate barriers to the termination of parental rights in appropriate cases, to promote the adoption of children with special needs, and for other purposes; to the Committee on Finance.

THE SAFE ADOPTIONS AND FAMILY ENVIRONMENTS ACT

Mr. CHAFEE. Mr. President, today I am pleased to introduce legislation to make some critical reforms to the child welfare system. The goals of the legislation are twofold: to ensure that abused and neglected children are in safe settings, and to move children more rapidly out of the foster care system and into permanent placements.

While the goal of reunifying children with their biological families is laudable, we should not be encouraging States to return abused or neglected children to homes that are clearly unsafe; regrettably, this is occurring under current law.

Our legislation would clarify the primacy of safety and health in decisions made about children who have been abused and neglected. The legislation would also push States to identify and enact State laws to address those circumstances in which the rights of the biological parent should be terminated expeditiously (for example, when the parent has been found guilty of felony assault, chronic sexual abuse, or the murder of a sibling).

The legislation also would provide incentives to move children into permanent placements, either by returning them home when reunification is the goal or by removing barriers to adoption.

I would like to thank those who have worked so hard to develop this legislation. In particular, Senator ROCKEFELLER, the lead Democratic cosponsor, with whom I have worked for many years on childrens' issues. I also want to thank Senator DEWINE, who, as a former prosecutor, brings a good deal of legal expertise and personal experience to this issue. We are also grateful for all Senator JEFFORDS has done in the past to lay the groundwork for this important legislation.

My sincere thanks also goes out to the many child advocacy organizations which were so helpful in the development of this legislation.

Finally, it is encouraging that similar legislation has been introduced in the House by Representatives CAMP and KENNELLY. While there are minor differences between our bills, the overall goals of both bills are the same. In that regard, I look forward to working with our House counterparts toward the enactment this year of child welfare reform legislation this year.

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. 511

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Safe Adoptions and Family Environments Act''.

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

Sec. 1. Short title; table of contents.
TITLE I—REQUIRING CONSIDERATION OF THE HEALTH AND SAFETY OF A CHILD IN FOSTER CARE AND ADOPTION PLACEMENTS
Sec. 101. Improving foster care protection requirements.
Sec. 102. Clarifying State plan requirements.
Sec. 103. Including safety in case plan and case review system requirements.
Sec. 104. Multidisciplinary/multiagency child death review teams.
TITLE II—ENHANCING PUBLIC AGENCY AND COMMUNITY ACCOUNTABILITY FOR THE HEALTH AND SAFETY OF CHILDREN
Sec. 201. Knowledge development and collaboration to prevent and treat substance abuse problems among families known to child protective service agencies.
Sec. 202. Priority in providing substance abuse treatment.
Sec. 203. Foster care payments for children with parents in residential facilities.
Sec. 204. Reimbursement for staff training.
Sec. 205. Criminal records checks for prospective foster and adoptive parents and group care staff.
Sec. 206. Development of State guidelines to ensure safe, quality care to children in out-of-home placements.
TITLE III—INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN
Sec. 301. Reasonable efforts for adoption or location of a permanent home.
Sec. 302. Permanency planning hearings.
Sec. 303. Promotion of adoption of children with special needs.
Sec. 304. One-year reimbursement for reunification services.
Sec. 305. Adoptions across State and county jurisdictions.

TITLE IV—PROMOTION OF INNOVATION IN ENSURING SAFE AND PERMANENT FAMILIES

Sec. 401. Innovation grants to reduce backlogs of children awaiting adoption and for other purposes.

Sec. 402. Expansion of child welfare demonstration projects.

TITLE V—MISCELLANEOUS

Sec. 501. Effective date.

TITLE I—REQUIRING CONSIDERATION OF THE HEALTH AND SAFETY OF A CHILD IN FOSTER CARE AND ADOPTION PLACEMENTS

SEC. 101. IMPROVING FOSTER CARE PROTECTION REQUIREMENTS.

(a) IN GENERAL.—Paragraph (9)(B) of section 422(b) of the Social Security Act (42 U.S.C. 622(b)), as added by section 202(a)(3) of the Social Security Act Amendments of 1994 (Public Law 103–432; 108 Stat. 4453), is amended—

(1) in clause (iii)(I), by inserting ''safe and'' after ''where''; and

(2) in clause (iv), by inserting ''safely'' after ''remain''.

(b) CONFORMING AND TECHNICAL AMENDMENTS.—Title IV of the Social Security Act (42 U.S.C. 620–635) is amended—

(1) in section 422(b)—

(A) by striking the period at the end of paragraph (9) (as added by section 554(3) of the Improving America's Schools Act of 1994 (Public Law 103–382; 108 Stat. 4057)) and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) by redesignating paragraph (9), as added by section 202(a)(3) of the Social Security Act Amendments of 1994 (Public Law 103–432, 108 Stat. 4453), as paragraph (10); and

(2) in sections 424(b), 425(a), and 472(d), by striking ''422(b)(9)'' each place it appears and inserting ''422(b)(10)''.

SEC. 102. CLARIFYING STATE PLAN REQUIREMENTS.

(a) IN GENERAL.—Section 471 of the Social Security Act (42 U.S.C. 671) is amended—

(1) in subsection (a), by striking paragraph (15) and inserting the following:

''(15) provides that, in each case—

''(A) in determining reasonable efforts, as described in this section, the child's health and safety shall be the paramount concern; and

''(B) reasonable efforts will be made—

''(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home when the child can be cared for at home without endangering the child's health or safety; and

''(ii) to make it possible for the child to return to the child's home, except—

''(I) if the State through legislation has specified the cases in which the State is not required to make efforts at reunification because of circumstances that endanger the child's health or safety, which shall include cases such as those described in subsection (c); or

''(II) if a court determines that returning the child to the child's home, would endanger the child's health or safety;''; and

(2) by adding at the end the following:

''(c) For purposes of subsection (a)(15)(B)(ii)(I), the cases described in this subsection are as follows:

''(1) A case involving a child with a parent who has been found by a court of competent jurisdiction—

''(A) to have committed murder (as defined in section 1111(a) of title 18, United States Code) of another child of such parent;

''(B) to have committed voluntary manslaughter (as defined in section 1112(a) of title 18, United States Code) of another child of such parent;

''(C) to have aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of such parent;

''(D) to have committed a felony assault that results in serious bodily injury to the child or to another child of such parent; or

''(E) to have abandoned, tortured, chronically abused, or sexually abused the child.''.

(b) STATE LEGISLATION REQUIRED.—Section 471 of the Social Security Act (42 U.S.C. 671), as amended by subsection (a), is amended by adding at the end the following:

''(d) Not later than October 3, 1999, a State, in order to be eligible for payments under this part, shall have and enforce State laws that specify—

''(1) the cases, such as those described in subsection (c), in which the State is not required to make efforts at reunification of the child with the child's parent; and

''(2) the cases, such as those described in subsection (c), in which there are grounds for expedited termination of parental rights without efforts first being required to reunify the child with the child's parent because of the circumstances that endanger the child's health or safety.''.

(c) REDESIGNATION OF PARAGRAPH.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(1) by striking ''and'' at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) (as added by section 1808(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188; 110 Stat. 1903)) and inserting ''; and''; and

(3) by redesignating paragraph (18) (as added by section 505(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2278)) as paragraph (19).

SEC. 103. INCLUDING SAFETY IN CASE PLAN AND CASE REVIEW SYSTEM REQUIREMENTS.

Section 475 of the Social Security Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting ''safety and'' after ''discussion of the''; and

(B) in subparagraph (B)—

(i) by inserting ''safe and'' after ''child receives''; and

(ii) by inserting ''safe'' after ''return of the child to his own''; and

(2) in paragraph (5)—

(A) in subparagraph (A), in the matter preceding clause (i), by inserting ''a safe setting that is'' after ''placement in''; and

(B) in subparagraph (B)—

(i) by inserting ''the safety of the child,'' after ''determine''; and

(ii) by inserting ''and safely maintained in'' after ''returned to''.

SEC. 104. MULTIDISCIPLINARY/MULTIAGENCY CHILD DEATH REVIEW TEAMS.

(a) STATE CHILD DEATH REVIEW TEAMS.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 102(b), is amended by adding at the end the following:

''(e)(1) Not later than 5 years after the date of enactment of the Safe Adoptions and Family Environments Act, a State, in order to be eligible for payments under this part, shall submit to the Secretary a certification that the State has established and is maintaining, a State child death review team, and if necessary in order to cover all counties in the State, child death review teams on the regional or local level, that shall review child deaths, including deaths in which—

''(A) there has been a prior report of child abuse or neglect or there is reason to suspect that the child death was caused by, or related to, child abuse or neglect;

''(B) the child who died was a ward of the State or was otherwise known to the State or local child welfare agency;

''(C) the child death was a suicide; or

''(D) the cause of the child death was otherwise unexplained or unexpected.

''(2) A child death review team established in accordance with this subsection should have a membership that, as defined by the Secretary, will present a range of viewpoints that are independent from any specific agency, and shall include representatives from, at a minimum, specific fields of expertise, such as law enforcement, health, mental health, and substance abuse, and from the community.

''(3) A State child death review team shall—

''(A) provide support to a regional or local child death review team;

''(B) make public an annual summary of case findings;

''(C) provide recommendations for systemwide improvements in services to prevent fatal abuse and neglect; and

''(D) if the State child death review team covers all counties in the State on its own, carry out the duties of a regional or local child death review team described in paragraph (4).

''(4) A regional or local child death review team shall—

''(A) conduct individual case reviews;

''(B) assist with regional or local management of child death cases; and

''(C) suggest followup procedures and systems improvements.''.

(b) FEDERAL CHILD DEATH REVIEW TEAM.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by subsection (a), is amended by adding at the end the following:

''(f)(1) The Secretary shall establish a Federal child death review team that shall consist of at least the following:

''(A) Representatives of the following Federal agencies who have expertise in the prevention or treatment of child abuse and neglect:

''(i) Department of Health and Human Services.

''(ii) Department of Justice.

''(iii) Bureau of Indian Affairs.

''(iv) Department of Defense.

''(v) Bureau of the Census.

''(B) Representatives of national child-serving organizations who have expertise in the prevention or treatment of child abuse and neglect and that, at a minimum, represent the health, child welfare, social services, and law enforcement fields.

''(2) The Federal child death review team established under this subsection shall—

''(A) review reports of child deaths on military installations and other Federal lands, and coordinate with Indian tribal organizations in the review of child deaths on Indian reservations;

''(B) conduct ongoing reviews of the status of State child death review teams and regional or local child death review teams, and of the management of interstate child death cases;

''(C) provide guidance and technical assistance to States and localities seeking to initiate or improve child death review teams and to prevent child fatalities;

''(D) review and analyze relevant aggregate data from State child death review teams and from regional or local child death review teams, in order to identify and track national trends in child fatalities; and

''(E) develop recommendations on related policy and procedural issues for Congress, relevant Federal agencies, and States and localities for the purpose of preventing child fatalities.''.

TITLE II—ENHANCING PUBLIC AGENCY AND COMMUNITY ACCOUNTABILITY FOR THE HEALTH AND SAFETY OF CHILDREN

SEC. 201. KNOWLEDGE DEVELOPMENT AND COLLABORATION TO PREVENT AND TREAT SUBSTANCE ABUSE PROBLEMS AMONG FAMILIES KNOWN TO CHILD PROTECTIVE SERVICE AGENCIES.

(a) SOURCES OF FEDERAL SUPPORT FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT FOR PARENTS AND CHILDREN.—Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Administration for Children, Youth and Families, and the Director of the Center for Substance Abuse Prevention and the Director of the Center for Substance Abuse Treatment, shall prepare and provide to State child welfare agencies and substance abuse prevention and treatment agencies an inventory of all Federal programs that may provide funds for substance abuse prevention and treatment services for families receiving services directly or through grants or contracts from public child welfare agencies. An inventory prepared under this subsection shall include with respect to each Federal program listed, the amount of Federal funds that are available for that program and the relevant eligibility requirements. The Secretary shall biennially update the inventory required under this subsection.

(b) COLLABORATION BETWEEN FEDERALLY SUPPORTED SUBSTANCE ABUSE AND CHILD PROTECTION AGENCIES.—

(1) SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT.—Section 1932(a) of the Public Health Service Act (42 U.S.C. 300x–32(a)) is amended—

(A) in paragraph (6)(B), by striking ''and'' at the end;

(B) by redesignating paragraph (7) as paragraph (8); and

(C) by inserting after paragraph (6) the following:

''(7) the application contains an assurance that the State will collect information and prepare the report required under section 201(b)(3) of the Safe Adoptions and Family Environments Act; and''.

(2) SOCIAL SECURITY ACT.—Title IV of the Social Security Act is amended—

(A) in section 422(b), as amended by section 101(b) of this Act—

(i) in paragraph (10), by striking ''and'' at the end;

(ii) in paragraph (11), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(12) provide that the State shall collect information and prepare the report required under section 201(b)(3) of the Safe Adoptions and Family Environments Act.''; and

(B) in section 432(a)—

(i) in paragraph (7)(B), by striking ''and'' at the end;

(ii) in paragraph (8), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(9) provides that the State shall collect information and prepare the report required under section 201(b)(3) of the Safe Adoptions and Family Environments Act.''.

(3) REPORT ON JOINT ACTIVITIES.—

(A) IN GENERAL.—In order to be eligible to receive a grant under subpart 2 of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.) and under subparts 1 and 2 of part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.), the State substance abuse prevention and treatment agency responsible for administering a grant under subpart 2 of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.), and the State child welfare agency responsible for administering the State plans under subparts 1 and 2 of part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.) shall, not later than 12 months after the date of enactment of this Act, jointly prepare a report containing the information described in subparagraph (B) on the joint prevention and treatment activities conducted by such agencies, and shall submit the report to the Secretary of Health and Human Services who shall forward such report to the Administrator of the Administration for Children, Youth and Families, the Director of the Center for Substance Abuse Prevention, and the Director of the Center for Substance Abuse Treatment.

(B) REQUIRED INFORMATION.—The information described in this subparagraph shall, to the maximum extent practicable, include—

(i) a description of the characteristics of the parents of children, including the aggregate numbers, who are reported to State or local child welfare agencies because of allegations of child abuse or neglect and have substance abuse treatment needs, and the nature of those needs;

(ii) a description of the characteristics of the children of parents who are receiving substance abuse treatment from services administered by the State substance abuse prevention and treatment and medicaid agencies, including the aggregate number and whether they are in their parents' custody;

(iii) a description of the barriers that prevent the substance abuse treatment needs of clients of child welfare agencies from being treated appropriately;

(iv) a description of the manner in which the State child welfare and substance abuse prevention and treatment agencies are collaborating—

(I) to assess the substance abuse treatment needs of families who are known to child welfare agencies;

(II) to remove barriers that prevent the State from meeting the needs of families with substance abuse problems;

(III) to expand substance abuse prevention, including early intervention, and treatment for children and parents who are known to child welfare agencies; and

(IV) to provide for the joint funding of substance abuse treatment and prevention activities, the joint training of staff, and the joint consultations between staff of the 2 State agencies;

(v) a description of the information available on the treatment and cost-effectiveness of, and the annual expenditures for, substance abuse treatment services provided to families who are known to child welfare agencies;

(vi) available data on the number of parents and children served by both the State child welfare and the substance abuse prevention and treatment agencies and the number of the parents ordered by a court to seek such services; and

(vii) any other information determined appropriate by the Secretary of Health and Human Services.

(c) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Administration for Children, Youth and Families, the Director of the Center for Substance Abuse Prevention, and the Director of the Center for Substance Abuse Treatment, shall, using the information reported to the Secretary jointly by State child welfare and substance abuse prevention and treatment agencies, prepare and submit to the appropriate committees of Congress a report containing—

(1) a description of the extent to which clients of child welfare agencies have substance abuse treatment needs, the nature of those needs, and the extent to which those needs are being met;

(2) a description of the barriers that prevent the substance abuse treatment needs of clients of child welfare agencies from being treated appropriately;

(3) a description of the collaborative activities of State child welfare and substance abuse prevention and treatment agencies to jointly assess clients' needs, fund substance abuse prevention and treatment, train and consult with staff, and evaluate the effectiveness of programs serving clients in both agencies' caseloads;

(4) a summary of the available data on the treatment and cost-effectiveness of substance abuse treatment services for clients of child welfare agencies; and

(5) recommendations, including recommendations for Federal legislation, for addressing the needs and barriers, as described in paragraphs (1) and (2), and for promoting further collaboration of the State child welfare and substance abuse prevention and treatment agencies in meeting the substance abuse treatment needs of families.

SEC. 202. PRIORITY IN PROVIDING SUBSTANCE ABUSE TREATMENT.

Section 1927 of the Public Health Service Act (42 U.S.C. 300x–27) is amended—

(1) in the heading, by inserting ''**and caretaker parents**'' after ''**women**''; and

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting ''and all caretaker parents who are referred for treatment by the State or local child welfare agency'' after ''referred for''; and

(ii) by striking ''is given'' and inserting ''are given''; and

(B) in paragraph (2)—

(i) by striking ''such women'' and inserting ''such pregnant women and caretaker parents''; and

(ii) by striking ''the women'' and inserting ''the pregnant women and caretaker parents''.

SEC. 203. FOSTER CARE PAYMENTS FOR CHILDREN WITH PARENTS IN RESIDENTIAL FACILITIES.

Section 472(b) of the Social Security Act (42 U.S.C. 672(b)) is amended—

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period and inserting '', or''; and

(3) by adding at the end the following:

''(3) placed with the child's parent in a residential program that provides treatment and other necessary services for parents and children, including parenting services, when—

''(A) the parent is attempting to overcome—

''(i) a substance abuse problem and is complying with an approved treatment plan;

''(ii) being a victim of domestic violence;

''(iii) homelessness; or

''(iv) special needs resulting from being a teenage parent;

''(B) the safety of the child can be assured;

''(C) the range of services provided by the program is designed to appropriately address the needs of the parent and child;

''(D) the goal of the case plan for the child is to try to reunify the child with the family within a specified period of time; and

''(E) the parent described in subparagraph (A)(i) has not previously been treated in a residential program serving parents and their children together.''.

SEC. 204. REIMBURSEMENT FOR STAFF TRAINING.

(a) TRAINING OF PERSONNEL.—Section 474(a) of the Social Security Act (42 U.S.C. 674(a)) is amended—

(1) in paragraph (3)(A)—

(A) by striking ''75'' and inserting ''subject to subsection (e), 75'';

(B) by inserting '', and training directed at staff maintenance and retention'' after ''enrolled in such institutions''; and

(C) by striking ''of personnel'' and all that follows and inserting the following: ''of—

''(i) personnel employed or preparing for employment by the State agency or by the local agency administering the State plan in the political subdivision; and

''(ii) personnel employed by courts and State or local law enforcement agencies, and by State, local, or private nonprofit substance abuse prevention and treatment agencies, mental health providers, domestic violence prevention and treatment agencies, health agencies, child care agencies, schools, and child welfare, family service, and community service agencies that are collaborating with the State or local agency administering the State plan in the political subdivision to keep children safe, support families, and provide permanent families for children, including adoptive families;'';

(2) in paragraph (3)(B), by striking ''75'' and inserting ''subject to subsection (e), 75''; and

(3) by adding at the end, the following flush sentence:

''Amounts under subparagraphs (A) and (B) of paragraph (3) shall be paid without regard to the primary provider of the training, and shall be determined without regard to the proportion of children on whose behalf foster care maintenance payments or adoption assistance payments are being made under the State plan under this part.''.

(b) REQUIREMENTS FOR RECEIPT OF TRAINING FUNDS.—Section 474 of the Social Security Act (42 U.S.C. 674) is amended by adding at the end the following:

''(e) REQUIREMENTS FOR REIMBURSEMENT OF TRAINING EXPENDITURES.—

''(1) CROSS-AGENCY TRAINING EXPENDITURES.—

''(A) GUIDELINES FOR QUALIFIED EXPENDITURES.—The Secretary shall issue guidelines describing the types of training expenditures that shall qualify for reimbursement under subsection (a)(3)(A)(ii). The guidelines issued under the authority of this subparagraph shall emphasize reimbursement of training expenditures to treat and prevent child abuse and neglect, keep children safe, support families, and provide permanent families for children, including adoptive families.

''(B) DOCUMENTATION.—A State may not receive reimbursement for training expenditures incurred under subsection (a)(3)(A)(ii) unless the State submits to the Secretary, in such form and manner as the Secretary may specify, documentation evidencing that the expenditures conform with the guidelines issued under subparagraph (A).

''(2) MAINTENANCE OF EFFORT.—With respect to a fiscal year, a State may not receive funds under subparagraph (A) or (B) of subsection (a)(3) if the total State expenditures for the previous fiscal year for training under such subparagraphs are less than the total State expenditures under such subparagraphs for fiscal year 1996.''.

SEC. 205. CRIMINAL RECORDS CHECKS FOR PROSPECTIVE FOSTER AND ADOPTIVE PARENTS AND GROUP CARE STAFF.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 102(c), is amended—

(1) in paragraph (18), by striking ''and'' at the end;

(2) in paragraph (19), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(20) provides procedures for criminal records checks and checks of a State's child abuse registry for any prospective foster parent or adoptive parent, and any employee of a child-care institution before the foster parent or adoptive parent, or the child-care institution may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that—

''(A) in any case in which a criminal record check reveals a criminal conviction for child abuse or neglect, or spousal abuse, a criminal conviction for crimes against children, or a criminal conviction for a crime involving violence, including rape, sexual or other assault, or homicide, approval shall not be granted; and

''(B) in any case in which a criminal record check reveals a criminal conviction for a felony or misdemeanor not involving violence, or a check of any State child abuse registry indicates that a substantiated report of abuse or neglect exists, final approval may be granted only after consideration of the nature of the offense or incident, the length of time that has elapsed since the commission of the offense or the occurrence of the incident, the individual's life experiences during the period since the commission of the offense or the occurrence of the incident, and any risk to the child.''.

SEC. 206. DEVELOPMENT OF STATE GUIDELINES TO ENSURE SAFE, QUALITY CARE TO CHILDREN IN OUT-OF-HOME PLACEMENTS.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 205, is amended—

(1) in paragraph (19), by striking ''and'' at the end;

(2) in paragraph (20), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(21) provides that the State shall—

''(A) develop and implement State guidelines to ensure safe, quality care for children residing in out-of-home care settings, such as guidelines issued by a nationally recognized accrediting body, including the Council on Accreditation for Services for Families and Children and the Joint Commission on the Accreditation of Health Care Organizations;

''(B) assist public provider agencies and private provider agencies that contract and subcontract with the State to meet over a time period determined by the State the quality guidelines established under subparagraph (A);

''(C) clearly articulate the guidelines against which an agency's performance will be judged and the conditions under which the guidelines established under subparagraph (A) will be applied;

''(D) regularly monitor progress made by the public and private agencies located in the State in meeting the guidelines established under subparagraph (A); and

''(E) judge agency compliance with the guidelines established under subparagraph (A) through measuring improvement in child and family outcomes, and through such other measures as the State may determine appropriate to judge such compliance.''.

TITLE III—INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

SEC. 301. REASONABLE EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.

(a) STATE PLAN.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 206, is amended—

(1) in paragraph (20), by striking ''and'' at the end;

(2) in paragraph (21), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(22) provides that, in any case in which the State's goal for the child is adoption or placement in another permanent home, reasonable efforts will be made to place the child in a timely manner with an adoptive family, legal guardian, or in another planned permanent living arrangement and to complete whatever steps are necessary to finalize the adoption or legal guardianship.''.

(b) CASE PLAN AND CASE REVIEW SYSTEM.—Section 475 of the Social Security Act (42 U.S.C. 675) is amended—

(1) in paragraph (1)—

(A) in the last sentence—

(i) by striking ''the case plan must also include''; and

(ii) by redesignating such sentence as subparagraph (D) and indenting appropriately; and

(B) by adding at the end, the following:

''(E) In the case of a child with respect to whom the State's goal is adoption or placement in another permanent home, documentation of the steps taken by the agency to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.''; and

(2) in paragraph (5)(B), by inserting ''(including the requirement specified in paragraph (1)(E))'' after ''case plan''.

SEC. 302. PERMANENCY PLANNING HEARINGS.

Section 475(5)(C) of the Social Security Act (42 U.S.C. 675(5)(C)) is amended—

(1) by striking ''dispositional'' and inserting ''permanency planning'';

(2) by striking ''no later than'' and all that follows through ''12 months'' and inserting ''not later than 12 months after the original placement (and not less frequently than every 6 months''; and

(3) by striking ''future status of'' and all that follows through ''long term basis)'' and inserting ''permanency plans for the child (including whether and, if applicable, when, the child will be returned to the parent, referred for termination of parental rights, placed for adoption, or referred for legal guardianship, or other planned permanent living arrangement)''.

SEC. 303. PROMOTION OF ADOPTION OF CHILDREN WITH SPECIAL NEEDS.

(a) IN GENERAL.—Section 473(a) of the Social Security Act (42 U.S.C. 673(a)) is amended by striking paragraph (2) and inserting the following:

''(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

''(i) prior to termination of parental rights and the initiation of adoption proceedings was in the care of a public or licensed nonprofit private child care agency or Indian tribal organization either pursuant to a voluntary placement agreement (provided the child was in care for not more than 180 days) or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of such child, or was residing in a foster family home or child care institution with the child's minor parent (either pursuant to such a voluntary placement agreement or as a result of such a judicial determination); and

''(ii) has been determined by the State pursuant to subsection (c) to be a child with special needs.

''(B) Notwithstanding any other provision of law, and except as provided in paragraph (7), a child who is not a citizen or resident of

the United States and who meets the requirements of subparagraph (A) and is otherwise determined to be eligible for the receipt of adoption assistance payments, shall be eligible for adoption assistance payments under this part.

''(C) A child who meets the requirements of subparagraph (A) and who is otherwise determined to be eligible for the receipt of adoption assistance payments shall continue to be eligible for such payments in the event that the child's adoptive parent dies or the child's adoption is dissolved, and the child is placed with another family for adoption.''.

(b) EXCEPTION.—Section 473(a) of the Social Security Act (42 U.S.C. 673(a)) is amended by adding at the end the following:

''(7)(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any child that—

''(i) would be considered a child with special needs under subsection (c);

''(ii) is not a citizen or resident of the United States; and

''(iii) the parents adopted outside of the United States or the parents brought into the United States for the purpose of adopting such child.

''(B) Subparagraph (A) shall not be construed as prohibiting payments under this part for a child described in subparagraph (A) that is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of such child by the parents described in such subparagraph.''.

SEC. 304. ONE-YEAR REIMBURSEMENT FOR REUNIFICATION SERVICES.

Section 475(4) of the Social Security Act (42 U.S.C. 675(4)) is amended by adding at the end the following:

''(C)(i) In the case of a child that is removed from the child's home and placed in a foster family home or a child care institution, the foster care maintenance payments made with respect to such child may include payments to the State for reimbursement of expenditures for reunification services, but only during the 1-year period that begins on the date that the child is removed from the child's home.

''(ii) For purposes of clause (i), the term 'reunification services' includes services and activities provided to a child described in clause (i) and the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, and may only include individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, and transportation to or from such services.''.

SEC. 305. ADOPTIONS ACROSS STATE AND COUNTY JURISDICTIONS.

(a) STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall appoint an advisory panel that shall—

(1) study and consider how to improve procedures and policies to facilitate the timely and permanent adoptions of children across State and county jurisdictions;

(2) examine, at a minimum, interjurisdictional adoption issues—

(A) concerning the recruitment of prospective adoptive families from other States and counties;

(B) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties;

(C) arising from a review of the comity and full faith and credit provided to adoption decrees and termination of parental rights orders from other States; and

(D) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children; and

(3) not later than 12 months after the final appointment to the advisory panel, submit to the Secretary the report described in subsection (c).

(b) COMPOSITION OF ADVISORY PANEL.—The advisory panel required under subsection (a) shall, at a minimum, be comprised of representatives of the following:

(1) Adoptive parent organizations.

(2) Public and private child welfare agencies that place children for adoption.

(3) Family court judges' organizations.

(4) Adoption attorneys.

(5) The Association of the Administrators of the Interstate Compact on the Placement of Children and the Association of the Administrators of the Interstate Compact on Adoption and Medical Assistance.

(6) Any other organizations that advocate for adopted children or children awaiting adoption.

(c) CONTENTS OF REPORT.—The report required under subsection (a)(3) shall include the results of the study conducted under paragraphs (1) and (2) of subsection (a) and recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children, including interstate and intercounty adoptions, so that children will be assured timely and permanent placements.

(d) CONGRESS.—The Secretary shall submit a copy of the report required under subsection (a)(3) to the appropriate committees of Congress, and, if relevant, make recommendations for proposed legislation.

TITLE IV—PROMOTION OF INNOVATION IN ENSURING SAFE AND PERMANENT FAMILIES

SEC. 401. INNOVATION GRANTS TO REDUCE BACKLOGS OF CHILDREN AWAITING ADOPTION AND FOR OTHER PURPOSES.

(a) IN GENERAL.—Section 474(a) of the Social Security Act (42 U.S.C. 674) is amended—

(1) in paragraph (4), by striking the period and inserting ''; plus''; and

(2) by inserting after paragraph (4), the following:

''(5) an amount equal to the State's innovation grant award, if an award for the State has been approved by the Secretary pursuant to section 478.''.

(b) INNOVATION GRANTS.—Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by inserting after section 477, the following:

''SEC. 478. INNOVATION GRANTS.

''(a) PAYMENTS.—

''(1) IN GENERAL.—A State that has an application described in paragraph (3) approved by the Secretary, shall be entitled to receive payments, in an amount determined by the Secretary, under section 474(a)(5) for not more than 5 years for the purpose of carrying out the innovation projects described in paragraph (2).

''(2) INNOVATION PROJECTS DESCRIBED.—The innovation projects described in this paragraph are projects that are designed to achieve 1 or more of the following goals:

''(A) Reducing a backlog of children in long-term foster care or awaiting adoption placement.

''(B) Ensuring, not later than 1 year after a child enters foster care, a permanent placement for the child.

''(C) Identifying and addressing barriers that result in delays to permanent placements for children in foster care, including inadequate representation of child welfare agencies in termination of parental rights and adoption proceedings, and other barriers to termination of parental rights.

''(D) Implementing or expanding community-based permanency initiatives, particularly in communities where families reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

''(E) Developing and implementing community-based child protection activities that involve partnerships among State and local governments, multiple child-serving agencies, the schools, and community leaders in an attempt to keep children free from abuse and neglect.

''(F) Establishing new partnerships with businesses and religious organizations to promote safety and permanence for children.

''(G) Assisting in the development and implementation of the State guidelines described in section 471(a)(21).

''(H) Developing new staffing approaches to allow the resources of several States to be used to conduct recruitment, placement, adoption, and post-adoption services on a regional basis.

''(I) Any other goal that the Secretary specifies by regulation.

''(3) APPLICATION.—

''(A) IN GENERAL.—An application for a grant under this section may be submitted for fiscal year 1998 or 1999 and shall contain—

''(i) a plan, in such form and manner as the Secretary may prescribe, for an innovation project described in paragraph (2) that will be implemented by the State for a period of not more than 5 consecutive fiscal years, beginning with fiscal year 1998 or 1999, as applicable;

''(ii) an assurance that no waivers from provisions in law, as in effect at the time of the submission of the application, are required to implement the innovation project; and

''(iii) such other information as the Secretary may require by regulation.

''(4) DURATION.—An innovation project approved under this section shall be conducted for not more than 5 consecutive fiscal years, except that the Secretary may terminate a project before the end of the period originally approved if the Secretary determines that the State conducting the project is not in compliance with the terms of the plan and application approved by the Secretary under this section.

''(5) AMOUNTS.—With respect to a fiscal year, the Secretary shall award State grants under this section, in an aggregate amount not to exceed $50,000,000 for that fiscal year. A State shall not receive a grant under this section unless, for each year for which a grant is awarded, the State agrees to match the grant with $1 for every $3 received.

''(6) NONSUPPLANTING.—Any amounts payable to a State under paragraph (5) of section 474(a) shall be in addition to the amounts payable under paragraphs (1), (2), (3), and (4) of that section, and shall supplement but not replace any other funds that may be available for the same purpose in the localities involved.

''(7) EVALUATIONS AND REPORTS.—

''(A) STATE EVALUATIONS.—Each State administering an innovation project under this section shall—

''(i) provide for ongoing and retrospective evaluation of the project, meeting such conditions and standards as the Secretary may require; and

''(ii) submit to the Secretary such reports, at such times, in such format, and containing such information as the Secretary may require.

''(B) REPORTS TO CONGRESS.—The Secretary shall, on the basis of reports received from States administering projects under this section, submit interim reports, and, not later than 6 months after the conclusion of all projects administered under this section, a

final report to Congress. A report submitted under this subparagraph shall contain an assessment of the effectiveness of the State projects administered under this section and any recommendations for legislative action that the Secretary considers appropriate.

''(8) REGULATIONS.—Not later than 60 days after the date of enactment of this section, the Secretary shall promulgate final regulations for implementing this section.''.

SEC. 402. EXPANSION OF CHILD WELFARE DEMONSTRATION PROJECTS.

Section 1130(a) of the Social Security Act (42 U.S.C. 1320a–9(a)) is amended by striking ''10'' and inserting ''15''.

TITLE V—MISCELLANEOUS

SEC. 501. EFFECTIVE DATE.

This Act and the amendments made be this Act take effect on October 1, 1997.

Mr. ROCKEFELLER. Mr. President, children who are at risk of abuse and neglect are among the most vulnerable group in our society, and we have a compelling obligation to do a better job in protecting such children. I am proud to join Senator CHAFEE and others in a bipartisan effort to improve our federal child welfare programs.

Almost a decade ago, I had the opportunity and privilege to serve as the Chairman of the bipartisan National Commission on Children. Our diverse group spent several years traveling the country to meet with families, officials and advocates to delve into the needs of children and families. We issued a unanimous report in 1991 with a comprehensive strategy to help children and strengthen families. One of the chapters of our report was directed toward helping children at risk of abuse and neglect. Since the Children's Commission, I have been working to convert our bipartisan recommendations into policy and programs.

The Children's Commission basic recommendations called for a more comprehensive strategy for child protective services. The panel noted the need for a range of services so that children and families could get what was needed on a case-by-case basis. Our report call for intensive family preservation services when appropriate. If children must be removed from their homes, reunification services need to be available to prepare children and parents for a safe return. There should be better training for foster parents and child welfare staff. Adoption can be the best option for some children so adoption procedures should be streamlined.

The SAFE Act—Safe Adoptions and Family Environments—follows through on the Children's Commission recommendations. Our bill stresses that a child's safety and a child's health must be a primary concern by clarifying current law known as ''reasonable efforts.'' It is designed to encourage states to move children into stable, permanent placements quickly. For some children, this will be adoption. For others, appropriate intervention and support services can enable children to return home safely. This bill will direct states to establish a permanency planning hearing for a child in foster care within 12 months, instead of the current 18 months which will cut by one-third the amount of time a child is without a plan for a stable home. Our bill also offers states incentives to reduce the backlog of children waiting for adoption.

I have fought for children and family programs throughout my career, and will continue to do so. Last Congress, I argued strongly that there is a fundamental difference between welfare reform and child welfare and foster care. I opposed a block grant approach to foster care because abused children should not be placed at further risk or face time-limits. Ultimately, I voted for the block grant of welfare reform.

While I opposed attempts to convert child welfare and foster care into a block grant last year, I acknowledged the problems in the system and pledged to work on ways to strengthen and improve programs for abused and neglected children outside the context of welfare reform. Today, we are delivering on that commitment and working in a bipartisan manner to encourage reform.

Reform is desperately needed. Reports indicate that more than 1 million American children suffered some type of abuse and neglect. Over 450,000 children are in foster care in our country. In my home state of West Virginia, referrals to Child Protective Services are expected to increase from 12,500 reports in 1991 to 17,000 this year. Foster care placements in West Virginia has jumped to 3,113 children in January 1997, up from 2,900 children in January 1996.

Clearly, we must work together with the states to address the complicated needs of abused and neglected children.

While our legislation may seem technical in nature, its goals are focused on protecting children and ensuring that every child moves swiftly into a safe, permanent placement where they can grow up healthy and secure. To achieve such basic goals, we need to invest in a range of services—from prevention of abuse, family reunification, and adoptions.

Protecting children and helping families should be a bipartisan, community based effort. We must forge partnerships with states and advocates. This legislation reflects this spirit and commitment.

By Mr. KENNEDY (for himself, Mr. DODD, Mr. ROBB, Ms. MOSLEY-BRAUN, Mr. LAUTENBERG, Mr. KERRY, Ms. SNOWE, Mrs. MURRAY, Mr. FEINGOLD, Mr. HARKIN, Mr. CHAFEE, Mr. JEFFORDS, Mr. AKAKA, Mr. BINGAMAN, and Mrs. FEINSTEIN):

S.J. Res. 24. A joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men; to the Committee on the Judiciary.

THE EQUAL RIGHTS AMENDMENT

Mr. KENNEDY. Mr. President, it is an honor to introduce the equal rights amendment on behalf of myself and 14 other Senators. Two days before the 25th anniversary of the first congressional approval of the equal rights amendment, we reaffirm our strong commitment to making the ERA part of the Constitution of the United States. We intend to do all we can to see that it becomes part of the Constitution, which is where it belongs.

In a sense, action now is more important than ever. Women have achieved a great deal during the last two decades. But the statutory route has not been as successful as we had hoped. Too many women and girls still face unfair and discriminatory barriers in their education, careers, sports, and other goals. The glass ceiling, the locked door, the sticky floor, the wage gap, and the occupation gap are very real problems.

Women still earn only 76 cents for each dollar earned by men. After a full day's work, no woman should be forced to take home only three-quarters of a pay-check.

The vast majority of women are still clustered in a narrow range of traditionally low-paying occupations. Too many women continue to be victims of sexual harassment.

We must do more, much more, to guarantee fair treatment in the workplace and in all aspects of society. Existing laws against sex discrimination in all its ugly forms can't get the job done. The need for a constitutional guarantee of equal rights for women is compelling.

Susan B. Anthony said it best over a century ago. When the Constitution says, ''We the People,'' it should mean all the people. Those words speak to us across the years. And in 1997, we intend to see that ''all'' means ''all''—and making ERA part of the Constitution is the right way to do it.

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

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

S.J. Res. 24

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

''ARTICLE—

''SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

''SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

''SECTION 3. This amendment shall take effect two years after the date of ratification.''.

ADDITIONAL COSPONSORS

S. 6

At the request of Mr. INHOFE, his name was added as a cosponsor of S. 6,