EC–2376. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed license for the export of defense articles under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2377. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting pursuant to law, a proposed approval for exports to the United Kingdom under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2378. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the youth programs of the Family and Youth Services Bureau for fiscal year 1995; to the Committee on the Judiciary.

EC–2379. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the report on the valuation of VA's portfolio of loans, notes, and guarantees, and other collateralized debts; to the Committee on Veterans' Affairs.

EC–2380. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on highway signs for the National Highway System; to the Committee on Environment and Public Works.

EC–2381. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, five rules including a rule entitled Tebuconazole (FRL–5849–2, 5838–7, 5718–7, 5720–4, 5725–7) received on June 24, 1997; to the Committee on Environment and Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 231. A bill to establish the National Cave and Karst Research Institute in the State of New Mexico, and for other purposes (Rept. No. 105–37).

S. 423. A bill to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason (Rept. No. 105–38).

S. 669. A bill to provide for the acquisition of the Plains Railroad Depot at the Jimmy Carter National Historic Site (Rept. No. 105–39).

S. 731. A bill to extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes (Rept. No. 105–40).

By Mr. THOMPSON, from the Committee on Governmental Affairs, without amendment:

H.R. 173. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize donation of surplus Federal law enforcement canines to their handlers.

H.R. 680. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize the transfer to States of surplus personal property for donation to nonprofit providers of necessaries to impoverished families and individuals.

S. 307. A bill to amend the Federal Property and Adminstrative Services Act of 1949 to authorize the transfer to States of surplus personal property for donation to nonprofit providers of assistance to impoverished families and individuals, and for other purposes.

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 833. A bill to designate the Federal building courthouse at Public Square and Superior Avenue in Cleveland, Ohio, as the ''Howard M. Metzenbaum United States Courthouse.''

By Mr. THOMPSON, from the Committee on Governmental Affairs, without amendment:

S. 861. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize donation of Federal law enforcement canines that are no longer needed for official purposes to individuals with experience handling canines in the performance of law enforcement duties.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

IN THE ARMY

The following-named officer for appointment in the U.S. Army, to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. David J. Kelley, 0000

IN THE ARMY

The following-named officer for appointment in the U.S. Army to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Randolph W. House, 0000

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI:

S. 964. A bill to direct a property conveyance in the State of California; to the Committee on Energy and Natural Resources.

S. 965. A bill to amend title II of the Hydrogen Future Act of 1996 to extend an authorization contained therein, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BREAUX:

S. 966. A bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices and for other purposes; to the Committee on Commerce, Science, and Transportation.

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

S. 967. A bill to amend the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act to benefit Alaska natives and rural residents, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MACK:

S. 968. A bill to provide for special immigrant status for certain aliens working as journalists in Hong Kong; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. CHAFEE, and Mr. TORRICELLI):

S. 969. A bill ordering the preparation of a Government report detailing injustices suffered by Italian Americans during World War II, and a formal acknowledgement of such injustices by the President; to the Committee on the Judiciary.

By Mr. CONRAD (for himself and Mr. BUMPERS):

S. 970. A bill to amend the Immigration and Nationality Act to exempt certain aliens who work for the Department of Veterans Affairs from the requirement that they work only in areas designated as having a shortage of health-care professionals; to the Committee on the Judiciary.

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

S. 971. A bill to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes; to the Committee on Environment and Public Works.

By Mr. REED (for himself, Mr. CHAFEE, Mr. COATS, and Mr. INHOFE):

S. 972. A bill to amend the Internal Revenue Code of 1986 to prohibit any deduction for gambling losses; to the Committee on Finance.

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

S. 973. A bill to designate the United States Post Office building located at 551 Kingstown Road in Wakefield, Rhode Island, as the ''David B. Champagne Post Office Building''; to the Committee on Governmental Affairs.

By Mr. REED:

S. 974. A bill to amend the Immigration and Nationality Act to modify the qualifications for a country to be designated as a visa waiver pilot program country; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI:

S. 964. A bill to direct a property conveyance in the State of California; to the Committee on Energy and Natural Resources.

THE WARD VALLEY LAND TRANSFER ACT

Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation designed to end an impasse that we've endured for far too long—the stalemate over the Ward Valley low-level radioactive waste facility and efforts to implement an important Federal law—the low level radioactive waste policy amendments.

I am doing this today because of documents that have recently come to light under the Freedom of Information Act and due to the continuing differences between the words spoken under oath by a Presidential nominee before my committee and his actions to date.

For more than 10 years, the State of California acting in complete accordance with Federal law and in cooperation with responsible Federal agencies, has been attempting to open a low-level radioactive waste repository at a Mojave Desert site in Ward Valley.

The long, tortured process costing more that $40 million has included a statewide search resulting in the selection of a virtually unpopulated desert valley; two environmental impact statements under the National Environmental Policy Act; two biological opinions under the Endangered Species Act; and judicial review including the California Supreme Court.

From the outset, the State has been dogged by the lawsuits and protests of a small fringe group of activists.

But in the end, California has met every test.

Ward Valley was found to be safe, and the State issued a license containing more than 130 carefully developed safety and environmental stipulations.

Consistent with its own independent evaluations, the Department of the Interior agreed to sell the land to California for the Ward Valley site in January 1993.

But shortly thereafter, the Department of the Interior abruptly reversed itself, demanding a series of discretionary studies and reviews that, 4 years later, still have no end in sight.

Specifically, the Department of the Interior asked the National Academy of Sciences to review seven technical issues related to the site.

In May 1995, the Academy's report was released. The report was highly favorable to the site selection and each of the seven issues. As a consequence, Interior Secretary Babbitt indicated that he intended to transfer the site.

Two more months passed.

On July 27, 1995, the President's nominee to be the Deputy Secretary of the Interior, Mr. John Garamendi, appeared before the Energy and Natural Resources Committee and testified under oath, that the Ward Valley issue ''will be satisfactorily culminated shortly * * * and I believe it should be.''

With that testimony in mind, I recently reviewed documents made available under the Freedom of Information Act.

With the benefit of those documents and other evidence of the systematic delay fostered by the Department of the Interior to block Ward Valley, I have reached the sad conclusion that Congress must intervene to end this stalemate.

Before I go into the disturbing history of this issue and the content of the documents uncovered by the Freedom of Information Act request, some background is important.

There is a tremendous difference between low level radioactive waste and the spent fuel issue the Senate has been debating over the past 2 weeks.

Spent fuel, of course, is the high level waste from nuclear power reactors.

Low level radioactive waste, on the other hand, is composed of items such as medical gowns, biomedical wastes, filters, resins and similar wastes generated from cancer treatment, biomedical research, and other activities.

Low level radioactive waste is generated during cutting-edge research that may help us find a cure for AIDS.

Low level radioactive waste is generated from the development of new drugs and cancer therapies.

Low level radioactive waste is generated by the high tech and biotech industry in the quest for new products and services that will be at the foundation of our 21st century economy.

While it also includes waste from nuclear power production, Congress wisely placed specific limits on the levels which are a State responsibility.

When the Senate was debating the fate of high-level spent fuel, we clearly had a situation where the State of Nevada opposed a repository. The Governor of Nevada opposed it.

But the low level waste issue is vastly different. Governor Wilson of California supports Ward Valley.

The State of California has been working on plans open a low level waste repository in California for the past decade.

They have done so in complete accordance with Federal law, which assigns responsibility for disposal of a specified portion of low level radioactive waste to the States.

Governor Wilson understands that thousands of jobs in California, particularly among the high-tech and biotech industries, absolutely depend on having dependable access to a safe, secure facility for low level radioactive waste.

Governor Wilson understands that countless lives might be saved through the cancer breakthrough or AIDS cure that the use of radioactive materials might bring.

Governor Wilson also understands that low level radioactive waste is currently being stored at hundreds of urban locations all across California.

It's being stored in basements and in parking lot trailers.

It's being stored in warehouses and temporary shelters.

It's on college campuses, in residential neighborhoods, and in hospitals.

And as long as the waste is in these temporary locations in populated areas, it is subject to accidental radioactive releases from fire, earthquakes, and floods.

Governor Wilson is understandably concerned about the health and safety of Californians. He is frustrated by the delays California has faced in trying to get this facility open.

So am I.

I am frustrated by the fact that the President's nominee to be the Deputy Secretary of the Interior, Mr. John Garamendi, appeared before the Energy and Natural Resources Committee on July 27, 1995 and testified under oath, that the Ward Valley issue should and would be quickly resolved.

After that testimony, seven months passed.

Nothing happened.

On February 15, 1996, Deputy Secretary Garamendi indicated that ''new information'' related to a different low-level radioactive waste site at Beatty, Nevada, required further testing at the Ward Valley site and the preparation of yet another Supplemental Environmental Impact Statement (SEIS).

Literally one day before his announcement, the Director of the U.S. Geological Survey said that linkages between the Beatty site and Ward Valley were ''too tenuous to have much scientific value.''

But the Deputy Secretary ignored the Director's scientific advice. In a public news conference, Deputy Secretary Garimendi indicated that the additional testing would take about four months, and that the preparation of a Supplemental Environmental Impact Statement (SEIS) would take about a year.

On August 5, 1996, months after we expected the testing to be complete, an official of the lab Interior selected to perform the testing said, ''Interior Department officials have yet to submit a work plan . . . on the testing they want done.''

During this same time frame, Interior Department officials were distributing documents to the public containing factually incorrect information taken verbatim from Ward Valley opponents, even though accurate information was readily available from the Department of Energy.

It now appears that Interior made no effort to check the facts with DOE with respect to the veracity of the information it was providing to the public.

Recently, the Governor of California made me aware of documents he obtained through Freedom of Information Act (FOIA) requests. These documents reveal the following:

Despite the understandable lack of radiological expertise resident in the Department of the Interior, the Department has made no effort to communicate with the federal agency with primary expertise and jurisdiction in the matter—the Nuclear Regulatory Commission.

The professional, non-political, radiological experts of the Department of Energy have indicated that: ''Interior's concern that the [Ward Valley] facility lacks an environmental monitoring system has no basis in fact;'' the Department of the Interior is attempting to subvert the National Academy of Sciences recommendations with respect to the timing of the tests and nature of the tests to be performed; the Department of the Interior has understated the costs and the time required for the conduct of the tests; and the tests the Department of the Interior has outlined will result in additional litigation regardless of their outcome.

Mr. President, these documents are plain on their face.

But they are particularly troubling since they show the vast difference between the words spoken by Mr. Garamendi in his confirmation hearing, and the actions he has taken since his confirmation.

Let's again review the facts:

Deputy Secretary Garamendi testified under oath that the Ward Valley issue would be, and should be, quickly resolved.

He then called for additional testing that did not conform to the recommendations of the National Academy of Sciences, creating a false linkage in the public's mind between the

Beatty site and the Ward Valley site, despite the fact that his own USGS Director said that such a linkage could not be justified by the science.

Deputy Secretary Garamendi spread misinformation about the composition of the radioactive waste stream in Department press materials supplied by project opponents, making no effort to check their veracity with the Department of Energy, the Nuclear Regulatory Commission, or any other agency with expertise in such matters.

Deputy Secretary Garamendi persistently failed to get the testing underway, which he later blamed on the threats of a lawsuit that were not, in fact, made until long after the time he said the tests would be complete.

Indeed, the Department of the Interior has designed a process specifically intended to foster further delay.

Mr. President, over the past month or so there has been a new twist that is frankly the straw that breaks the camel's back.

The State of California, in its continuing efforts to achieve a compromise, has agreed to perform additional testing pursuant to the National Academy of Sciences guidelines prior to the federal land transfer.

Let me make this clear: California has always agreed to do the additional testing . . . the issue of dispute is that Interior insisted the testing be done prior to the land transfer, while California and the National Academy of Sciences said the testing would be best accomplished after the land transfer.

So California has now agreed to perform additional testing prior to the land transfer. They have clearly made efforts to compromise.

I received a letter from Deputy Secretary Garamendi, dated February 27, 1997, which exclaimed that the delays at Ward Valley have gone on long enough, and that welcomed the decision by the State of California to undertake additional testing.

When I saw that letter. I thought to myself: Finally, this issue will be resolved.

I was shocked by what happened next:

The BLM produced an administrative determination, allegedly two years old that nobody had ever seen, that will not permit California to undertake the testing that Interior insists must be undertaken prior to the land transfer! They have California in a ''Catch-22.''

BLM informed the California Department of Health Services that they could not proceed with the testing without a new permit from the BLM and yet another biological consultation with the U.S. Fish and Wildlife Service with respect to the Desert Tortoise.

The BLM based this requirement for a new permit on an ''administrative determination,'' allegedly issued two years ago, which limits surface disturbance associated with pre-construction testing. But further examination revealed several points about this document:

This old administrative determination was unknown to the California Department of Health Services, U.S. Ecology, and even the local BLM District Office until weeks ago.

The local BLM office is unable to provide any evidence that this ''administrative determination'' was provided to any of the parties whose actions it supposedly limits.

The administrative determination is absurd on its face. The U.S. Fish and Wildlife Service has determined that the 90 acres of surface disturbance associated with the construction and operation of the Ward Valley facility will not jeopardize the desert tortoise or its habitat. Moreover, under current BLM guidelines, ten acre mining operations on other BLM land would not trigger the need for a biological consultation if certain desert tortoise protection measures were incorporated into the plan submitted to BLM. Indeed, five acre mining operations would not even require the applicant to submit a tortoise protection plan for approval. Yet, it is BLM's sudden contention that less than 5 acres of surface disturbance associated with testing will require yet another full biological consultation by the U.S. Fish and Wildlife Service.

Clearly, Mr. President, this latest obstruction, and the reasons cited for it, make no sense in the context of the various other permits and administrative determinations that have been previously granted at the site.

The fact that this administrative decision suddenly surfaced in the midst of state planning to undertake the new tests is highly unusual—perhaps even worthy of investigation by the Inspector General.

Mr. President, earlier this year I asked the General Accounting Office to investigate this matter. That investigation is now underway. At this very moment, GAO auditors are reviewing documents in the District BLM office in California and at Department of Interior headquarters here in Washington.

The GAO report will not be complete until July 15, but let me simply say that their preliminary findings appear to agree with my understanding of the facts.

What we are seeing at the Department of the Interior is a blatant display of bad faith and obstructionism with regard to California's efforts to implement Federal law through development of the Ward Valley site.

I am particularly distressed by this, particularly in light of the words spoken by Mr. Garamendi at his confirmation hearing.

Mr. President, the legislation I am introducing today would convey the BLM land at Ward Valley to California as soon as a check for the fair market value of the land plus $100 is tendered to the Secretary of the Treasury, after the State of California formally tenders a promise to conduct the additional testing as outlined by the National Academy of Sciences.

It's a simple bill. California agrees to do the testing outlined by the National Academy of Sciences, California gets its site, and the taxpayer gets fair market value for the land.

I am willing to consider alternative approaches, but my bottom line is a quick and satisfactory resolution to this issue by qualified experts rather than political activists.

I am willing to entertain negotiated compromises.

I am willing to entertain alternative legislative approaches.

I am not willing to entertain further delay.

In closing, Mr. President, let me share a story that I find particularly rich in irony:

Interior Secretary Babbitt, while the Governor of Arizona, was deeply concerned about the difficulty of the Federal Government to provide for adequate low-level radioactive waste disposal sites. He was asked by the National Governors' Association to chair a task force to look into the problem.

The Babbitt task force recommended that the responsibility for low-level radioactive waste management be given to the States. In 1981, Governor Babbitt wrote that ''the siting of a low level nuclear waste facility involves primarily state and local issues that are best resolved at the government level closest to those affected.''

There was another Governor at the time who was active in the National Governor's Association and supported this approach: The Governor of Arkansas. His name was Bill Clinton.

Congress listened to these Governors, and passed the Low Level Radioactive Waste Policy Act which gave the States the responsibility for low level radioactive waste management.

California is the first State to license a facility under the Low Level Radioactive Waste Policy Act.

And who are the Federal authorities who are today frustrating California's attempt to follow the law and open its site?

None other than Mr. Babbitt and his Deputy at the Department of the Interior, himself a former California state official.

What an irony that former State officials would declare a State unworthy of trust in carrying out its congressionally assigned duties and responsibilities.

What a difference a few years in Washington can make.

By Mr. MURKOWSKI:

S. 965. A bill to amend title II of the Hydrogen Future Act of 1996 to extend an authorization contained therein, and for other purposes; to the Committee on Energy and Natural Resources.

AUTHORIZATION EXTENSION LEGISLATION

Mr. MURKOWSKI. Mr. President, today I offer a very simple bill with the hope that it can receive expedited consideration in the Senate and be sent over to the House of Representatives for further consideration.

Last year Congress authorized a program to explore the feasibility of integrating hydrogen fuel cells with systems to produce hydrogen from photovoltaic production or solid waste through gasification or steam reforming. This program is outlined in title II of Public Law 104–271, the Hydrogen Future Act of 1996.

The program was originally authorized through 1997 and 1998, with funds to remain available until 1999.

It has since become clear that the program will require a longer period of time to put into place. Accordingly, this bill simply extends the authorization through fiscal year 2001, with funds to remain available until September 30, 2002.

For those who are unfamiliar with the promise of hydrogen energy systems, let me simply add that hydrogen is widely regarded as an important potential energy carrier with the potential to join electricity as a key component of a future sustainable energy system. Unlike coal, oil, or gas, hydrogen cannot be directly mined or produced—it must be extracted from hydrogen-rich materials such as natural gas, biomass, or even water. While there are significant technical and economic barriers that prevent the near-term, widespread use of hydrogen as an energy carrier, the eventual promise of hydrogen is compelling. Thus, Congress and the Department of Energy has placed a high priority on hydrogen energy research and development.

I urge that my colleagues support the bill.

By Mr. BREAUX:

S. 966. A bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE BIOMATERIALS ACCESS ASSURANCE AND HEALTH SAFETY ACT OF 1997

Mr. BREAUX. Mr. President, today I rise to introduce the Biomaterials Access Assurance and Health Safety act of 1997. While other legislation has been introduced that is intended to protect suppliers of raw materials used in the construction of important medical implants from liability, I believe that my legislation strikes the proper balance between the legitimate concerns of these suppliers and the health insurance and legal rights of patients.

The legislation I am introducing today is similar to biomaterials legislation that has been introduced independently by Senator LIEBERMAN and as a part of S. 5, the Product Liability Fairness Act. It does, however, differ on several important points. First, this bill would not immunize negligent suppliers or supplies who fail to warn of the harmful effects of their products. Second, this bill would be limited to the protection of suppliers of raw materials. Other biomaterials bills, while speaking only of the need to protect suppliers of raw materials, use overly broad language that immunizes a whole host of product manufacturers. Third, unlike the legislation sent to the President last year, this bill would not cover suppliers of materials used in breast implants.

Mr. President, there are two other important differences between this legislation and other biomaterials liability legislation that has been introduced. I believe that this bill can be passed by Congress. I'm not sure that other biomaterials bills can. We know too well that the larger product liability bill will be controversial, and that its passage and enactment are uncertain at best. This biomaterials bill has been introduced as a stand-alone measure and can move independently of the product liability bill.

I also believe that this legislation can be signed into law by President Clinton, and I'm not too sure that other biomaterials liability legislation can. When the President vetoed the product liability bill sent to him by the 104th Congress, H.R. 965, which included biomaterials language similar to that in Senator LIEBERMAN's bill, he noted that he wanted to enact fair and balanced biomaterials liability legislation. However, he felt that the language before him went too far, particularly because it immunized negligent biomaterials suppliers. I believe the President will find the provisions of my bill acceptable.

Mr. President, I think that this bill is the best hope we have of passing fair and meaningful biomaterials legislation, and I urge my colleagues to join me in support of its passage. I ask unanimous consent that the entire 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. 966

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

SECTION 1. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1997.''

SEC. 2. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging adequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 3. DEFINITIONS.

As use in this Act:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT.—With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional health care services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services;

(ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier; or

(iii) a person alleging harm caused by a breast implant.

(3) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage;

(B) COMMERCIAL LOSS.—The term includes any commercial loss or loss of or damage to an implant.

(4) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(A) suture materials used in implant procedures.

(5) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360)(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j) and the regulations issued under such section.

(6) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 1(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g))

(7) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

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

(9) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—the term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

sec. 4. general requirements: applicability; preemption.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this Act, a biomaterials supplier may raise any defense set forth in section 5.

(A) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this Act is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 6.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this Act applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this Act; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this Act establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this Act and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 5. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials suppler that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c);

(C) furnishes raw materials that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(D) knows, or through reasonable inquiry could have known:

(i) of the application to which the raw material is to be put;

(ii) of the risks attendant to such use; and

(iii) that the buyer or user of the raw material is ignorant of such risks, but failed to warn such buyer or user of such risks, may be liable for harm to a claimant described in subsection (e); and

(E) furnishes raw materials that are defective may be liable for harm to a claimant as described in subsection (f).

(b) LIABILITY MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—

(A) The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(f) of such Act (21 U.S.C. 360(f)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 6(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 6, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of a subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law be liable

as seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held little to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 6(c)(3)(B)(ii) finds on the basis of affidavits submitted in accordance with section 6 that is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(ii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

(e) LIABILITY FOR FAILURE TO WARN.—A biomaterials supplier may, to the extent required or permitted by any other applicable law, be liable for harm caused by an implant if the biomaterials supplier—

(1) knew, or through reasonable inquiry could have known;

(A) of the application to which the raw material was to be put;

(B) of the risks attendant to such use;

(C) that the buyer or user of the raw material was ignorant of such risks; and

(2) failed to warn such buyer or user of such risks.

(f) LIABILITY FOR DEFECTIVE MATERIAL.—A biomaterials supplier may, to the extent permitted by any other applicable law, be liable for harm caused by an implant if the harm was in whole or in part caused by a defect in the raw material supplied by the biomaterials supplier.

SEC. 6. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this Act, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 5(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 5(c), be considered to be a seller of the implant that allegedly caused harm to the claimant;

(iii) section 5(e), be found to have failed to warn the buyer or user of the raw material of its known risks;

(iv) section 5(f), be found to have supplied defective material; or

(B)(i) the claimant has failed to establish pursuant to section 5(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with Secretary pursuant to section 510(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 5(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 5(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted connection to the action that is subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted the parties in accordance with section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATES OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 5 on the grounds that the defendant is not a manufacturer subject to such section 5(b) or seller subject to section 5(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 5(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 5(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGEMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion to dismiss to be a motion for summary judgment made pursuant to subsection (c).

(c) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is a no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 5(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (92) of section 5(9)(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 5(d) or the failure to establish the applicable elements of section 5(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(d) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 5(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(a) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier for a manufacturer appearing in lieu of a supplier pursuant to subsection (f) for attorney fees and costs, if

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biolmaterials supplier was clearly without merit and frivolous at the time the claim was brought.

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

S. 967. A bill to amend the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act to benefit Alaska Natives and rural residents, and for other purposes; to the Committee on Energy and Natural Resources.

TECHNICAL CHANGES TO ANCSA AND ANILCA

Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation on behalf of Alaska Natives and residents of rural Alaska. This legislation makes technical changes to both the Alaska Native Claims Settlement Act [ANCSA] and the Alaska National Interest Lands Conservation Act [ANILCA]. Most of the provisions are similar to those contained in H.R. 2505 passed by the House last year. These changes are the direct result of more than three days of hearings consisting of 14 panels and more than 155 witnesses, the Senate Committee on Energy and Natural Resources held throughout Alaska during the last Congress.

ANCSA CHANGES

Mr. President, ANCSA is 25 years old. This legislation is a living, working document being used to improve the lives of Alaska's Native residents and the future generations of Alaska Natives. We have amended this document numerous times with technical changes in order to make it a more effective piece of legislation.

The changes I am offering to ANCSA today would:

1. Allow Native Regional Corporations the option of retaining mineral estates of native allotments surrounded by ANCSA 12(a) and 12(b) selections.

2. Amend section 22(c) of ANCSA to include the Haida Corporation in the transfer of the administration of certain mining claims.

3. Codify an agreement reached between ANCSA Native corporations regarding revenue sharing on sales of rock, sand and gravel.

4. Direct the Secretary of Interior to determine the value of certain Calista Corporation lands and to complete the exchange authorized by Congress in 1991.

5. Authorize five southeast Alaska Native villages to organize as Native corporations.

There are two provisions that I would like to single out here in my remarks today.

Mr. President, section 5 of this legislation implements a land exchange with the Calista Corporation, an Alaska Native regional corporation organized under the authority of the Alaska Native Claims Settlement Act. This exchange, originally authorized in 1991, by Public Law 102–172, would provide for the United States to acquire approximately 225,000 acres of Calista and village corporation lands and interests in lands within the Yukon Delta National Wildlife Refuge in southwestern Alaska.

The Refuge serves as important habitat and breeding and nesting grounds for a variety of fish and wildlife, including numerous species of migratory birds and waterfowl. As a result, the Calista exchange will enhance the conservation and protection of these vital habitats and thereby further the purpose of ANCSA and the Alaska National Interest Lands Conservation Act.

In addition to conservation benefits, this exchange will also render much needed economic benefits to the Yupik Eskimo people of southwestern Alaska. The Calista region is burdened by some of the harshest economic and social conditions in the Nation. As a result of this exchange, the Calista Corporation will be better able to make the kind of investments that will improve the region's economy and the lives of the Yupik people. In this regard, this provision furthers and carries out the underlying purposes of ANCSA.

This provision is, in part, the result of discussions by the various interested parties. As a result of those discussions, a number of modifications were made to the original package of lands offered for exchange. Chief among these were the addition of another 27,000 acres of surface estate (fee and conservation casements) of village corporation lands, as well as the Calista subsurface estate lying underneath those lands, and the removal of the Tuluksak mineralized parcel from the exchange.

In a last minute agreement to move the bill through the House last year, the total value of the exchange package was reduced by 25% to $30 million. Such a reduction was unwarranted and seriously undermined the utility and benefit of the provision for the public and for Calista and the twelve village corporations involved. This legislation I introduce today restores the value to the Calista exchange portion of this bill.

Mr. President, it is time to move forward with this exchange.

Section 8 of this legislation provides long-overdue authorization to the Southeast Alaska Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, Alaska that will permit them to establish Native Corporations under ANCSA. The history of these five villages clearly shows that the Alaska Natives who enrolled in them and their heirs have been inadvertently and wrongly denied the financial and cultural benefits of enrollment in a Village, Urban, or Group Corporation.

This section simply amends ANCSA to provide authorization for each of the five Unrecognized Communities to form a Native Corporation pursuant to ANCSA, and directs the Secretary of the Interior, in consultation with the Secretary of Agriculture, to submit to Congress a report regarding lands and other compensation that should be provided to the Corporations formed pursuant to this section. This section specifically requires further Congressional action to provide compensation for these communities.

ANILCA CHANGES

This legislation also addresses changes that need to be made to ANILCA to ensure that the Federal agencies are fairly implementing this legislation consistent with its written provisions and promises. These changes will ensure that its implementation is consistent with the intent of Congress. These are simple changes that among other things:

1. Require all public land managers in Alaska or in a region containing Alaska to take a training course in ANILCA.

2. Authorize continuation of traditional subsistence activities in Glacier Bay subject to reasonable regulations by NPS.

3. Protect traditional and inholder access in and across ANILCA lands.

4. Protect property owners from having to relinquish ownership interests in cabins and possessions within them on ANILCA lands.

Mr. President, seventeen years ago, Congress enacted the ANILCA. Despite the opposition of many Alaskans, over 100 million acres of land was set aside in a series of vast Parks, Wildlife Refuges, and Wilderness units. Much of the concern about the Act was the impact of these Federal units, and related management restrictions, on traditional activities and lifestyles.

To allay these concerns, ANILCA included a series of unique provisions designed to ensure that traditional activities and lifestyles would continue, that Alaskans would not be subjected to a ''permit lifestyle'', and that the agencies would be required to recognize the crucial distinction between managing small units surrounded by millions of people in the lower 48 and vast multi-million acre units encompassing a relative handful of individuals and communities in Alaska. The sponsors of ANILCA issued repeated assurances that the establishment of these units would in fact protect traditional activities and lifestyles and not place them in jeopardy.

Early implementation of the Act closely reflected these promises. However, as the years have passed, many of the Federal managers seem to have lost sight of these important representations to the people of Alaska. Agency personnel, trained primarily in lower 48 circumstances, have brought the mentality of restriction and regulation to Alaska. The critical distinctions between management of Parks, Refuges and Wilderness areas in the 49th State and the lower 48 have blurred. The result is the spread of restriction and regulation and the creation of the exact ''permit lifestyle'' which we were promised would never happen.

I have become increasingly aware of this disturbing trend. In my conversations with Alaskans, I hear many complaints about ever increasing restraints on traditional activities and requirements for more and more paperwork and permits. A whole new ''industry'' has sprung up to help Alaskans navigate the bureaucratic shoals that have built up during the past few years.

Let me cite a few of the incidents that have come to my attention. The U.S. Fish and Wildlife Service decides it wants to establish a ''wilderness management'' regime and eliminate motorboat use on a river. It proceeds with the plan until protests cause the Regional Solicitor to advise the Service that its plan violates Section 1110(a) of ANILCA. Owners of cabins built, occupied, and used long before ANILCA are told they must give up their interests in the cabins although Section 1303 expressly enables cabin owners to retain their possessory interests in their cabins. Visitor services contracts are awarded and then revoked because the agencies failed to adhere to the requirements of Section 1307. Small landowners of inholdings seek to secure access to their property and are informed that they must file for a right-of-way as a transportation and utility system and pay the U.S. hundreds of thousands of dollars to prepare a totally unnecessary environmental impact statement. An outfitter spends substantial time and money responding to a request for proposals, submits an apparently winning proposal, and has the agency arbitrarily change its mind and decide to withdraw its request—it does not offer to compensate the outfitter for his efforts.

Mr. President, the legislation I introduce today will ensure that agencies are fairly implementing ANILCA consistent with its written provisions and promises. These technical corrections to ANILCA will ensure that its implementation is consistent with the intent of Congress.

Mr. President, conditions have changed in the 17 years since the passage of ANILCA and we have all had a great deal of experience with the Act's implementation. It is time to make the law clearer and to make the federal manager's job easier.

Mr. President, I ask unanimous consent that a table be printed in the RECORD.

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

REVISED CALISTA LANDS PACKAGE

Parcel name	Interest to be conveyed	Acreage	Per acre value	Total exchange value
Dall Lake	Fee—Surface	10,000	$325	$3,250,000
Hamilton	Fee—Surface	7,135	325	2,318,875
Section 14(h)(8) entitlement	Fee—Surface and Subsurface	10,000	704	7,040,000
Hooper Bay	Subsurface	27,034	90	2,433,060
Scammon Bay	Subsurface	87,052	90	7,834,680
Kusilvak	Subsurface	57,284	90	5,155,560
Calista subsurface on TKC surface	Subsurface	17,000	90	1,530,000
Calista subsurface on NIMA surface	Subsurface	10,000	90	900,000
TKC	Conservation easement	17,000	243	4,131,000
NIMA	Surface	10,000	325	3,250,000
Calista subsurface on Hamilton surface	Subsurface	7,135	90	642,150
Calista subsurface on Dall Lake surface	Subsurface	10,000	90	900,000
VALUATION SUMMARY				
NIMA lands	Surface	20,000		$6,500,000
Hamilton lands	Surface	7,135		2,318,875
TKC lands	Surface	17,000		4,131,000
Total village surface		44,135		12,949,875
Calista	Surface and subsurface, all parcels	225,505		26,435,450
Total exchange value				39,385,325

By Mr. MACK:

S. 968. A bill to provide for special immigrant status for certain aliens working as journalists in Hong Kong; to the Committee on the Judiciary.

THE HONG KONG PRESS FREEDOM ACT

Mr. MACK. Mr. President, I rise today to join my colleague, Senator LIEBERMAN, to introduce the Hong Kong Press Freedom Act.

Mr. President, as we consider China and Hong Kong in these final weeks before Hong Kong reversion, it is important for us to reflect on the facts, and what drives our behaviors toward China.

We fought the Cold War for freedom and democracy. The war is over, but we know of 1.2 billion people still wearing the yoke of communism—or at least nondemocratic oppression. On July 1, we might be forced to witness that number grow by 6 million as Hong Kong falls under control of the People's Republic of China. If the defining moment of the 1980s was the crumbling of the Berlin Wall and the spread of freedom and democracy, we should not allow this decade to be remembered most by the victory of totalitarianism over human dignity.

One essential element of freedom is press freedom. Until recently, Hong Kong enjoyed one of the freest presses in the world. But already, experts point to instances of self censorship occurring on the island. All indications are that this freedom will continue to deteriorate following Hong Kong's reversion.

Today, I am introducing a bill in the Senate to encourage press freedom in Hong Kong. A similar measure was introduced in the House by Representative Porter and 27 other members in February. The measure supports those Hong Kong journalists who chose to remain loyal to the standards of honest and open reporting. Specifically, this bill provides special immigration status to journalists and their families should they be threatened as a result of their reporting. When Senator LIEBERMAN and I visited Hong Kong earlier this year, we heard several stories of self-censorship occurring in the Hong Kong press. Many of the larger papers were losing circulation and the underground and small papers were growing. It is this free thought and competition which we seek to preserve.

Without press freedom, what other freedom can survive? While this is a small and specific measure, its impact can be profound. I urge immediate consideration and passage of this measure.

Mr. LIEBERMAN. Mr. President, I rise today to join my colleague, Senator MACK, in introducing the Hong Kong Press Freedom Act.

In a very few days, Hong Kong will revert to Chinese sovereignty. Already, there is evidence that China will not fully honor its commitment to preserve Hong Kong's democratic institutions and way of life under the rubric, one country, two systems. Beijing has announced it will eliminate Hong Kong's democratically elected legislative council and that it will reimpose several restrictive civil order statutes, including against certain types of political expression. Even more disturbing, there are indications that media self-censorship is replacing freedom of the press.

It is fitting and proper that we introduce this legislation now. Eight years ago, Chinese authorities, most of whom remain in power today, brutally massacred students and others who wanted assurances that their government would become more accountable to the will of the people. They were seeking democratic progress, not revolutionary license. Beijing answered them with tanks, and 8 years later, Tiananmen Square remains a vivid reminder of what autocrats can and will do even in full view of astonished world opinion.

This bill would not have prevented the evil of Tiananmen Square; and it is not intended as a warning to China. It is simply principle put into action. As Americans, we understand how important a free press is to preserving the rule of law and to protecting the rights and dignity of individuals against the

power of the state. Our action here will help assure that reporters in hong Kong will not be cowed by the memory of Tiananmen Square. This bill supports those who choose to put themselves at risk by reporting honestly and openly what they see and hear when the Chinese flag replaces the Union Jack. We owe them our gratitude and protection, and this bill will help us provide it.

Specifically, this measure offers special immigration status to journalists and their families if they are threatened with reprisal because of their work. A similar measure was introduced in the House by Representative PORTER and 27 other Members in February. I urge my Senate colleagues to join this effort and to pass the Hong Kong press freedom bill.

By Mr. D'AMATO (for himself, Mr. CHAFEE and Mr. TORRICELLI):

S. 969. A bill ordering the preparation of a Government report detailing injustices suffered by Italian Americans during World War II, and a formal acknowledgement of such injustices by the President; to the Committee on the Judiciary.

THE WARTIME VIOLATION OF ITALIAN AMERICAN CIVIL LIBERTIES ACT

Mr. D'AMATO. Mr. President, thousands of Italian-Americans became innocent victims of wartime fever—a panicked and a paranoid reaction that all people of foreign extraction linked to belligerent countries were spies, sabatours and un-American. Fear of fifth columnists and quisling-type activities led government officials to abridge the civil rights of Americans who came from warring countries. Patriotic propaganda villifying the treachery of sneak attacks, blitzkrieg and totalitarian domination had an effect on the homefront view of Italian, German and Japanese immigrants as well as naturalized citizens, inducing discrimination. Initial mistakes were magnified by protective zeal into wholesale judgements about aliens, which led to the detainment, internment and harassment of these people.

That is why, Mr. President, I rise today to join with my colleagues Senator CHAFEE and TORRICELLI to right a terrible wrong that happened in this country over 50 years ago. In a country that so cherishes its equality among men and women, and boasts its democratic process, the United States has a dark spot in its history. Most Americans are not aware of the tragedy experienced by so many fellow citizens over half a century ago, a tragedy committed by the American government against people of Italian descent.

In early 1942, 600,000 aliens of Italian descent were deemed to be ''enemy aliens'' and were forced to re-register and carry identification. Our government restricted their travel to their neighborhoods and classified normal household items, such as shortwave radios, cameras, flashlights and weapons as contraband material in their possession.

On February 19, 1942, an Executive Order was issued giving the Secretary of War the authority to exclude American citizens as well as alien enemies, from such areas as the Secretary should designate. Americans now realize that this provision began a dark period of American history, authorizing the internment of immigrants residing in the United States as well as American citizens. While most Americans are aware of the internment of Japanese Americans during World War II, few are aware that Italians and German legal residents of the United States were also restricted.

Italian immigrants, Italian-Americans and their families were viewed as a genuine threat to American security at the beginning of World War II. Fear and ethnic bias led to the relocation of nearly 10,000 members of the Italian community from their homes on the West Coast. Hundreds of people were taken from their homes and brought to guarded army camp in areas as far east as Minnesota.

And all this effort and anxiety for naught- even by war's end, not a single act of sabotage was attributable to Italian-Americans. On the contrary, Italians fought in America's victorious forces in the European and Asian theater and thousands made the ultimate sacrifice for our nation's survival.

As one could imagine, the effects on these families were disastrous. Four men committed suicide. These men (Martini Battistessa, Guiseppe Micheli, Giovanni Sanguenetti and Stefano Terranova) suffered at the hands of government officials. Italian American fisherman were grounded, their livelihood gone.

Several experts have taken a look at the treatment of Italian Americans during the early 1940's. Stephen Fox wrote a book called The Unknown Internment: An Oral History of the Relocation of Italian Americans during World War II. In the preface, Stephen Fox describes the horrific treatment of people whose only crime was being of Italian descent in America during World War II.

Salvatore J. LaGumina, Professor of History and Director of the Center for Italian American Studies at Nassau Community College wrote an article in the Italian American Review called ''Enemy Alien: Italian Americans During World War II''. In the article he states:

''A ban on Italian language radio programs affected stations in New York City and Boston. Various Italian American newspapers suspended publication at least during the war years and in some instances ceased publication permanently. Customary Italian religious feast celebrations were likewise deferred or significantly diminished . . . In Westbury, Long Island, most Italian American organizations suspended their traditional feast celebrations for the duration of the war except for the Dell'Assunta Society which insisted it be allowed to march on the village streets during its festival, on the grounds that it was a religious not an ethnic celebration.

Robert Masulla, writing for the Italic Way Newsletter, cited that Italian immigrant fishermen were denied their livelihood and some ''even had their boats impounded by the U.S. government and utilized for patrol and minesweeping duties''.

It was not until October 12, 1942 that Italian immigrants were removed from the enemy alien category. Mr. Fox's historical study indicated that the internment effort was abandoned because the alien relocation would overly tax the U.S. Army's already over-extended logistical network, threaten the defense industry and lower civilian morale.

In 1988, this body finally faced a terrible past that we could no longer ignore—the internment of immigrants from Japan or Japanese-Americans. Now it is time to provide recognition and remorsefulness for the treatment of Italian aliens and Italian Americans who had to endure the horrific actions of our own government—a government that has stood for freedom, not oppression.

That is why I have joined with my colleagues in the House of Representatives, particularly its lead sponsors, Congressmen Engel and Lazio, to introduce this bill, the ''Wartime Violation of Italian American Civil Liberties Act''. Its provisions are clear and straight-forward:

It recognizes the treatment of Italian Americans during World War II.

It calls on the President to formally acknowledge that the civil liberties of Italian Americans were violated in the United States in the early 1940's.

It encourages federal agencies to support projects which increase the public's awareness of the internment of Italians during the Second World War.

It states that the President and Congress provide direct funding in order to educate the American public through a film documentary, particularly to document the testimony of the survivors of the internment.

It recommends the formation of an advisory committee to assist in the compilation of historical data, to accurately reflect the incidents that transpired.

It calls on the Department of Justice to publish a report on the U.S. Government's role in the internment.

The facts need to be told in order to acknowledge that these events happened, to remember those who lived through the humiliation and to discourage any similar injustices from occurring in the future.

By LAUTENBERG (for himself and Mr. TORRICELLI):

S. 971. A bill to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes; to the

Committee on Environment and Public Works.

THE BEACHES ENVIRONMENTAL ASSESSMENT, CLOSURE, AND HEALTH ACT OF 1997

Mr. LAUTENBERG. Mr. President, on behalf of Senator TORRICELLI and myself, I rise to introduce the Beaches Environmental Assessment, Closure and Health (BEACH) Act.

Mr. President, coastal tourism generates billions of dollars every year for local communities nationwide. Moreover, our coastal areas provide immeasurable recreational benefits for millions of Americans who want to build sand castles, cool off in the water, take a walk with that special someone, or just relax. New Jersey's tourism sector is the second largest revenue-producing industry in the state. Without a doubt, the lure of my state's beaches generates most of this revenue—over $7 billion annually.

Mr. President, this heavily used natural resource can actually pose a threat to human health if it is not properly managed. Studies conducted during the past two decades show a definite and alarming relationship between the amount of indicator bacteria in coastal waters and the incidence of illnesses associated with swimming.

Water-borne viruses are the major cause of swimming-associated diseases—gastroenteritis and hepatitis are the most common ones worldwide. And because an individual afflicted with these diseases are contagious, the risk of sewage-borne illness does not end with the bather.

Nationwide, state and local governments reported almost 4,000 beach closings or warnings because of bacteria contamination.

New Jersey has been particularly aggressive in protecting public health at the beach. New Jersey is one of only a few states to have a mandatory beach protection program that includes a bacteria standard, a monitoring program, and mandatory beach closure requirements. The program is designed to address water quality from both a health and an environmental perspective. Beaches are closed when bacteria levels exceed the standard regardless of the pollution source.

Ironically, New Jersey is penalized because it does more to protect public health than most other states. In past years the annual losses from beach closures in New Jersey have ranged from $800 million to $1 billion while beaches remain open in competing states that do not publicize the questionable quality of their water.

I have introduced over this legislation several times over the past several years. The bill, the Beaches, Environmental Assessment, Closure and Health Act, is known by the acronym ''BEACH'' bill. The bill will address the uneven efforts to protect beach goers by establishing uniform testing and monitoring procedures for pathogens and floatables in marine recreation waters.

This bill requires the EPA to establish procedures to monitor coastal waters to detect short-term increases in pathogenicity and to set minimum standards to protect the public from pathogen contaminated beach waters. And it will assure that the public is notified when beach waters exceed the standards and public health may be at risk.

Going to the beach should be a healthy and rejuvenating experience. A day at the beach shouldn't be followed by a day at the doctor. Whether they go to the beach in the Carolinas or in California, in New Jersey or New York—Americans across the country have a right to know when the water is and is not safe for swimming. Beach goers should be able to wade or swim in the surf without the fear of getting sick.

I am very pleased that EPA has recognized the seriousness of this problem and the need for a federal solution. As a result of BEACH bills that I have introduced, the EPA announced its own Beaches Environmental Assessment, Closure and Health program. Under this program, EPA has begun to survey state and local health and environmental directors on the quality of coastal recreational waters for posting on the Internet next year. By next summer, the website will serve as a clearinghouse to provide the public access to health-related information available from states and other sources on the quality of recreational water. The goal is to expand the beach public's ''right to know'' on the quality of the nation's beaches. The aim is to encourage those beaches that keep their water quality from the public to make that information as readily available as is done in New Jersey.

However, without mandatory, uniform regulation these EPA programs will be ineffective. While some states use EPA guidelines, others have no programs for regularly monitoring their beach water for swimmer safety. The Natural Resources Defense Council (NRDC) found that only 7 states—New Jersey, Connecticut, Delaware, Illinois, New Hampshire, Ohio and Indiana —comprehensively monitor their beaches, and a mere 6 states consistently close beaches when bacteria water quality standards are violated. Additionally, NRDC found that while a high bacteria level cause beach closures in one state other sates may allow people to swim despite the identical health risks. This discrepancy threatens public health. That is why we need to pass this legislation as soon as possible.

Mr. President, I urge my colleagues to join me in recognizing the importance of protecting public health at our nation's beaches by cosponsoring this legislation.

I ask unanimous consent that a copy 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. 971

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 ''Beaches Environmental Assessment, Closure, and Health Act of 1997''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Nation's beaches are a valuable public resource used for recreation by millions of people annually;

(2) the beaches of coastal States are hosts to many out-of-State and international visitors;

(3) tourism in the coastal zone generates billions of dollars annually;

(4) increased population has contributed to the decline in the environmental quality of coastal waters;

(5) pollution in coastal waters is not restricted by State and other political boundaries;

(6) coastal States have different methods of testing the quality of coastal recreation waters, providing varying degrees of protection to the public;

(7) the adoption of consistent criteria by coastal States for monitoring the quality of coastal recreation waters, and the posting of signs at beaches notifying the public during periods when the standards are exceeded, would enhance public health and safety; and

(8) while the adoption of such criteria will enhance public health and safety, exceedances of such criteria should be addressed, where feasible, as part of a watershed approach to effectively identify and eliminate sources of pollution.

(b) PURPOSE.—The purpose of this Act is to require uniform criteria and procedures for testing, monitoring, and posting of coastal recreation waters at beaches open for use by the public to protect public safety and improve environmental quality.

SEC. 3. ADOPTION OF COASTAL RECREATIONAL WATER QUALITY CRITERIA BY STATES.

(a) GENERAL RULE.—A State shall adopt water quality criteria for coastal recreation waters which, at a minimum, are consistent with the criteria published by the Administrator under section 304(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)(1)) not later than 3½ years following the date of the enactment of this Act. Such water quality criteria shall be developed and promulgated in accordance with the requirements of section 303(c) of the Federal Water Pollution Control Act (33 U.S.C. 1313(c)). A State shall incorporate such criteria into all appropriate programs into which such State would incorporate other water quality criteria adopted under such section 303(c) and revise such criteria not later than 3 years following the date of publication of revisions by the Administrator under section 4(b) of this Act.

(b) FAILURE OF STATES TO ADOPT.—If a State has not complied with subsection (a) by the last day of the 3½-year period beginning on the date of the enactment of this Act, the water quality criteria issued by the Administrator under section 304(a)(1) of the Federal Water Pollution Control Act shall become applicable as the water quality criteria for coastal recreational waters for the State, and shall be deemed to have been promulgated by the Administrator pursuant to section 303(c)(4).

SEC. 4. REVISIONS TO WATER QUALITY CRITERIA.

(a) STUDIES.—After consultation with appropriate Federal, State, and local officials, including local health officials, and other interested persons, but not later than the last day of the 3-year period beginning on the date of the enactment of this Act, the Administrator shall conduct, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, studies to provide

additional information to the current base of knowledge for use in developing—

(1) a more complete list of potential health risks, including effects to the upper respiratory system;

(2) better indicators for directly detecting or predicting in coastal recreational waters the presence of pathogens which are harmful to human health; and

(3) more expeditious methods (including predictive models) for detecting in coastal recreation waters the presence of pathogens which are harmful to human health.

(b) REVISED CRITERIA.—Based on the results of the studies conducted under subsection (a), the Administrator, after consultation with appropriate Federal, State, and local officials, including local health officials, shall issue, within 5 years after the date of the enactment of this Act (and review and revise from time to time thereafter, but in no event less than once every 5 years) revised water quality criteria for pathogens in coastal recreation waters that are harmful to human health, including a revised list of indicators and testing methods.

SEC. 5. COASTAL BEACH WATER QUALITY MONITORING.

Title IV of the Federal Water Pollution Control Act (33 U.S.C. 1341–1345) is amended by adding at the end thereof the following new section:

"SEC. 406. COASTAL BEACH WATER QUALITY MONITORING.

''(a) MONITORING.—Within 18 months after the date of enactment of this section, the Administrator shall publish and revise regulations requiring monitoring of, and specifying available methods to be used by States to monitor, coastal recreation waters at beaches open for use by the public for compliance with applicable water quality criteria for those waters and protection of the public safety. Monitoring requirements established pursuant to this subsection shall, at a minimum—

''(1) specify the frequency of monitoring based on the periods of recreational use of such waters;

''(2) specify the frequency of monitoring based on the extent and degree of use during such periods;

''(3) specify the frequency and location of monitoring based on the proximity of coastal recreation waters to known or identified point and nonpoint sources of pollution and in relation to storm events;

''(4) specify methods for detecting levels of pathogens that are harmful to human health and for identifying short-term increases in pathogens that are harmful to human health in coastal recreation waters, including in relation to storm events; and

''(5) specify the conditions and procedures under which discrete areas of coastal recreation waters may be exempted by the Administrator from the monitoring requirements of this subsection, if the Administrator determines that an exemption will not impair—

''(A) compliance with the applicable water quality criteria for those waters; and

''(B) protection of the public safety.

''(b) NOTIFICATION REQUIREMENTS.—Regulations published pursuant to subsection (a) shall require States to provide prompt notification to local governments and the public of exceedance of applicable water quality criteria for State coastal recreation waters or the immediate likelihood of such an exceedance. Notification pursuant to this subsection shall include, at a minimum—

''(1) prompt communication of the occurrence, nature, and extent of such an exceedance, or the immediate likelihood of such an exceedance based on predictive models to a designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which an exceedance is identified; and

''(2) posting of signs for the period during which the exceedance continues, sufficient to give notice to the public of an exceedance of applicable water quality criteria for such waters and the potential risks associated with water contact activities in such waters.

''(c) FLOATABLE MATERIALS MONITORING PROCEDURES.—The Administrator shall—

''(1) issue guidance on uniform assessment and monitoring procedures for floatable materials in coastal recreation waters; and

''(2) specify the conditions under which the presence of floatable material shall constitute a threat to public health and safety.

''(d) STATE IMPLEMENTATION.—A State must implement a monitoring program that conforms to the regulations issued pursuant to subsection (a) not later than 3½ years after the date of the enactment of this section and revise such program not later than 2 years following the date of publication of revisions by the Administrator under subsection (f).

''(e) DELEGATION OF RESPONSIBILITY.—Not later than 18 months after the date of the enactment of this section, the Administrator shall issue guidance for the delegation of State testing, monitoring, and posting programs under this section to local government authorities. In the case that such responsibilities are delegated by a State to a local government authority, or have been delegated to a local government authority before such date of enactment, in a manner that, at a minimum, is consistent with the guidance issued by the Administrator, State resources shall be made available to the delegated authority for the purpose of program implementation.

''(f) REVIEW AND REVISION OF REGULATIONS.—The Administrator shall review and revise regulations published pursuant to this section periodically, but in no event less than once every 5 years.

''(g) DEFINITIONS.—In this section, the following definitions apply:

''(1) COASTAL RECREATION WATERS.—The term 'coastal recreation waters' means Great Lakes and marine coastal waters (including bays) used by the public for swimming, bathing, surfing, or other similar water contact activities.

''(2) FLOATABLE MATERIALS.—The term 'floatable materials' means any foreign matter that may float or remain suspended in the water column and includes plastic, aluminum cans, wood, bottles, and paper products.''.

SEC. 6. REPORT TO CONGRESS.

Not later than 4 years after the date of the enactment of this Act, and periodically thereafter, the Administrator shall submit to Congress a report including—

(1) recommendations concerning the need for additional water quality criteria and other actions needed to improve the quality of coastal recreation waters; and

(2) an evaluation of State efforts to implement this Act, including the amendments made by this Act.

SEC. 7. GRANTS TO STATES.

(a) GRANTS.—Subject to subsection (c), the Administrator may make grants to States for use in fulfilling requirements established pursuant to section 3 of this Act and section 406 of the Federal Water Pollution Control Act.

(b) COST SHARING.—The total amount of grants to a State under this section for a fiscal year shall not exceed 50 percent of the cost to the State of implementing requirements established pursuant to section 3 of this Act and section 406 of the Federal Water Pollution Control Act.

(c) ELIGIBLE STATE.—After the last day of the 3½-year period beginning on the date of the enactment of this Act, the Administrator may make a grant to a State under this section only if the State demonstrates to the satisfaction of the Administrator that it is implementing its monitoring and posting program under section 406 of the Federal Water Pollution Control Act.

SEC. 8. DEFINITIONS.

In this Act, the following definitions apply:

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

(2) COASTAL RECREATION WATERS.—The term ''coastal recreation waters'' means Great Lakes and marine coastal waters (including bays) used by the public for swimming, bathing, surfing, or other similar body contact purposes.

(3) FLOATABLE MATERIALS.—The term ''floatable materials'' means any foreign matter that may float or remain suspended in the water column and includes plastic, aluminum cans, wood, bottles, and paper products.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Administrator—

(1) for use in making grants to States under section 7 not more than $4,500,000 for each of the fiscal years 1998 through 2002; and

(2) for carrying out the other provisions of this Act not more than $1,500,000 for each of the fiscal years 1998 through 2002.

By Mr. REED (for himself, Mr. CHAFEE, Mr. COATS, and Mr. INHOFE):

S. 972. A bill to amend the Internal Revenue Code of 1986 to prohibit any deduction for gambling losses; to the Committee on Finance.

REPEAL THE GAMBLING LOSS TAX DEDUCTION

Mr. REED. Mr. President, this week the Senate has considered legislation to fundamentally change Medicare and other programs that are vital to millions of Americans. I realize that we must make difficult choices about these valuable initiatives as we move toward a balanced budget. However, as we seek to invest in our nation's future, we must also confront loopholes and subsidies that waste our limited resources.

The tax code contains many such loopholes, which fail to reflect our nation's true priorities. For example, the United States is subsidizing thousands of professional gamblers by allowing tax deductions for gambling losses to the extent of gambling winnings. The Joint Tax Committee reports that this deduction costs taxpayers $1.43 billion over five years.

The gambling loss tax deduction is an anomaly for individuals who frequent an industry that sells itself as providing entertainment. In general, the tax code does not allow deductions for discretionary spending on entertainment, and I believe that it is more than reasonable to hold gambling expenditures to this same standard. Repealing the gambling loss tax deduction merely increases the cost of one entertainment option, a factor that gamblers can consider in determining how to spend their discretionary income. Furthermore, while most business deductions are for investments—

and even losses—that could have created needed job opportunities for our nation's citizens, this is not the case for the losses claimed by professional gamblers on their personal income taxes.

Perhaps more importantly, the gambling loss tax deduction primarily benefits professional gamblers and wealthy individuals who spend large sums on gambling. In 1994 alone, $2.78 billion in gambling losses was deducted on some 427,000 tax returns. Individuals with adjusted gross incomes of at least $75,000 claimed nearly 55% of these gambling losses, and people with adjusted gross incomes of at least $100,000 claimed an astounding 40% of these deductions.

When Congress is cutting essential programs to balance the budget, it is simply unsound policy to subsidize gamblers. I urge my colleagues to join me, Senator Chafee, Senator Coats, and Senator Inhofe in supporting legislation to repeal the gambling loss tax deduction, and in taking a step to ensure that we balance the budget in a way that reflects our nation's priorities and invests in our nation's future.

Mr. President, I ask unanimous consent that a copy of this legislation to repeal the gambling loss tax deduction be included in the RECORD.

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

S. 972

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

SECTION 1. PROHIBITION ON ANY DEDUCTION FOR GAMBLING LOSSES.

(A) IN GENERAL.—Section 165(d) of the Internal Revenue Code of 1986 (relating to wagering losses) is amended to read as follows:

''(d) NO DEDUCTION FOR WAGERING LOSSES.—No deduction shall be allowed for losses from wagering transactions.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 21, 1997.

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

S. 973. A bill to designate the United States Post Office building located at 551 Kingstown Road in Wakefield, Rhode Island, as the ''David B. Champagne Post Office Building''; to the Committee on Governmental Affairs.

THE DAVID B. CHAMPAGNE POST OFFICE ACT

Mr. REED. Mr. President, I rise today to pay tribute to Corporal David B. Champagne, USMC, who was posthumously awarded the Medal of Honor for service in Korea. In honor of the sacrifice made by this heroic young man, I am introducing a bill to name the new post office at 551 Kingstown Road in Wakefield, RI the ''David B. Champagne Post Office'' with my Rhode Island colleague Senator Chafee.

The son of Mr. and Mrs. Bernard L. Champagne, Corporal Champagne served in the National Guard before graduating from South Kingstown High School and enlisting in the Marines in March 1951. He was the only Rhode Island resident to receive this nation's highest award for valor, the Medal of Honor, for service in Korea. The citation accompanying the Medal read:

For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty while serving as a fire team leader of Company A, First Battalion, Seventh Marines, First Marine Division (Reinforced), in action against enemy aggressor forces in Korea on 28 May 1952. Advancing with his platoon in the initial assault of the company against a strongly fortified and heavily defended hill position, Corporal Champagne skillfully led his fire team through a veritable hail of intense enemy machine-gun, small-arms and grenade fire, overrunning trenches and a series of almost impregnable bunker positions before reaching the crest of the hill and placing his men in defensive positions. Suffering a painful leg wound while assisting in repelling the ensuing hostile counterattack, which was launched under cover of a murderous hail of mortar and artillery fire, he steadfastly refused evacuation and fearlessly continued to control his fire team. When the enemy counterattack increased in intensity, and a hostile grenade landed in the midst of the fire team, Corporal Champagne unhesitating seized the deadly missile and hurled it in the direction of the approaching enemy. As the grenade left his hand, it exploded, blowing off his hand and throwing him out of the trench. Mortally wounded by the enemy mortar fire while in this exposed position, Corporal Champagne, by his valiant leadership, fortitude and gallant spirit of self-sacrifice in the face of almost certain death, undoubtedly saved the lives of several of his fellow Marines. His heroic actions served to inspire all who observed him and reflect the highest credit upon himself and the United States Naval Service. He gallantly gave his life for his country.

In addition to the Medal of Honor, Corporal Champagne received the Korean Medal of Honor, the Rhode Island Cross, the Purple Heart, the National Defense Service Medal, the Korean Service Medal with 3 Battle Stars, the Korean Presidential Unit Citation, and the United Nation's Service Medal.

Corporal Champagne is truly an American hero. In the best spirit of this country, he volunteered to go to a foreign land and fight for people he had never met, so that they would not be subjected to the rule of a totalitarian regime.

In my home state of Rhode Island a Korean War Memorial is under construction at the State Veterans' Cemetery. Carved on that memorial will be the same words that are inscribed on the Korean War Memorial dedicated in Washington, DC: ''Freedom Is Not Free.'' Corporal Champagne understood the meaning of those words. He unhesitatingly paid the ultimate price to preserve the freedom of South Korea and to save the lives of his men.

This legislation would pay proper tribute to this remarkable young man and commemorate his incredible valor for future generations. I ask my colleagues to join Senator Chafee and me in honoring Corporal David B. Champagne by supporting this bill.

Mr. President, I ask unanimous consent that a copy of this legislation to name the new Wakefield post office after Corporal Champagne be included in the RECORD.

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

S. 973

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

SECTION 1. DESIGNATION OF DAVID B. CHAMPAGNE POST OFFICE BUILDING.

The United States Post Office building located at 551 Kingstown Road in Wakefield, Rhode Island, shall be known and designated as the ''David B. Champagne Post Office Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States Post Office building referred to in section 1 shall be deemed to be a reference to the ''David B. Champagne Post Office Building''.

By Mr. REED:

S. 974. A bill to amend the Immigration and Nationality Act to modify the qualifications for a country to be designated as a visa waiver pilot program country; to the Committee on the Judiciary.

VISA WAIVER PROGRAM LEGISLATION

Mr. REED. Mr. President, for the past 9 years the visa waiver pilot program has been a resounding success. Today, citizens from twenty-five countries are able to travel to the United States without the burden of obtaining a visa from a U.S. embassy before leaving home. Because the program makes travel so much easier, business has boomed, tourism has soared, and family members have been able to be with each other on occasions when it mattered. Cutting the bureaucratic red tape has strengthened our economic and cultural ties with participating countries. In addition, streamlining this administrative process has enabled the State Department to use its resources more efficiently and effectively, saving the American taxpayers thousands of dollars.

Today, I am introducing a bill which will extend the privilege of the visa waiver program to additional countries with strong ties to our Nation. This legislation will slightly modify the criteria that a country must meet in order to participate in the program. Under these modifications, one country which will gain admittance to the visa waiver program is Portugal. Portugal is one of only two members of the European Union which is not included in the visa waiver program. It is time for that inequity to be corrected.

The Portuguese were some of the earliest explorers and settlers of the United States and they have been contributing to our country ever since. Over one million U.S. citizens claim Portuguese descent and there are thriving Portuguese communities from New England to Hawaii. We owe these members of our American community the opportunity to see family members who live in Portugal when they need them, without the worry and hassle of obtaining a visa.

Inclusion in the visa waiver program will promote the economic exchange

between Portugal and the United States. Portugal is a valued trading partner and if members of the business community are able to travel to the U.S. without delaying to obtain a business, their contributions to this country will only increase. At a time when the U.S. economy is the wonder of the world and our market is truly global, our country should seek out and facilitate additional economic opportunities.

In 1974, the citizens of Portugal overthrew a dictatorship and established a democracy. Their brave actions began a wave of democratization that spread across the world and is still reverberating today. No other country reflects the principles of the United States better than Portugal. We should do everything possible to lower the barriers and strengthen the exchange between our two countries. Including Portugal in the visa waiver program is an important first step in this process.

Mr. President, I ask unanimous consent that a copy of this legislation be included in the RECORD.

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

S. 974

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

SECTION 1. QUALIFICATIONS FOR DESIGNATION AS PILOT PROGRAM COUNTRY.

Section 217(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)) is amended to read as follows:

''(2) QUALIFICATIONS.—Except as provided in subsection (g), a country may not be designated as a pilot program country unless the following requirements are met:

''(A) LOW NONIMMIGRANT VISA REFUSAL RATE.—Either—

''(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

''(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

''(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

''(ii) such refusal rate for nationals of that country during—

''(I) the previous full fiscal year was less than 3.5 percent; and

''(II) the two previous full fiscal years was at least 50 percent less than such refusal rate during fiscal year 1994.

''(B) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

''(C) LAW ENFORCEMENT INTERESTS.—The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.''.

ADDITIONAL COSPONSORS

S. 28

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

S. 211

At the request of Mr. WELLSTONE, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 211, a bill to amend title 38, United States Code, to extend the period of time for the manifestation of chronic disabilities due to undiagnosed symptoms in veterans who served in the Persian Gulf War in order for those disabilities to be compensable by the Secretary of Veterans Affairs.

S. 422

At the request of Mr. DOMENICI, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 422, a bill to define the circumstances under which DNA samples may be collected, stored, and analyzed, and genetic information may be collected, stored, analyzed, and disclosed, to define the rights of individuals and persons with respect to genetic information, to define the responsibilities of persons with respect to genetic information, to protect individuals and families from genetic discrimination, to establish uniform rules that protect individual genetic privacy, and to establish effective mechanisms to enforce the rights and responsibilities established under this Act.

S. 497

At the request of Mr. COVERDELL, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of 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.

S. 657

At the request of Mr. DASCHLE, the names of the Senator from Maine [Ms. SNOWE], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 657, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with veterans' disability compensation.

S. 728

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 728, a bill to amend title IV of the Public Health Service Act to establish a Cancer Research Trust Fund for the conduct of biomedical research.

S. 830

At the request of Mr. JEFFORDS, the names of the Senator from Connecticut [Mr. DODD], the Senator from Indiana [Mr. COATS], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of S. 830, a bill to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes.

S. 852

At the request of Mr. LOTT, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

SENATE JOINT RESOLUTION 24

At the request of Mr. KENNEDY, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of Senate Joint Resolution 24, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

AMENDMENT NO. 423

At the request of Mr. INHOFE, the names of the Senator from Alabama [Mr. SESSIONS] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of amendment No. 423 proposed to S. 936, an original bill to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 518

At the request of Mr. BUMPERS, the names of the Senator from Hawaii [Mr. AKAKA], and the Senator from Wisconsin [Mr. FEINGOLD] were added as cosponsors of amendment No. 518 proposed to S. 949, an original bill to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

AMENDMENT NO. 519

At the request of Mr. DURBIN, the names of the Senator from Missouri [Mr. BOND], the Senator from California [Mrs. BOXER], the Senator from Maryland [Ms. MIKULSKI], and the Senator from South Dakota [Mr. JOHNSON] were added as cosponsors of amendment No. 519 proposed to S. 949, an original bill to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

AMENDMENT NO. 520

At the request of Ms. LANDRIEU, her name was added as a cosponsor of amendment No. 520 proposed to S. 949, an original bill to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

AMENDMENTS SUBMITTED

THE TAX FAIRNESS ACT OF 1997

KOHL (AND OTHERS) AMENDMENT NO. 524

(Ordered to lie on the table.)