Gerald Fisher, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

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

By Mr. HATCH for the Committee on the Judiciary:

Loretta E. Lynch, of New York, to be United States Attorney for the Eastern District of New York for the term of four years.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. FEINGOLD (for himself, Mr. JEFFORDS, Mr. LEAHY, Mr. KOHL, and Mr. WELLSTONE):

S. 3128. A bill to establish the Dairy Farmer Viability Commission; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HELMS:

S. 3129. An original bill to provide for international debt forgiveness and the strengthening of anticorruption measures and accountability at international financial institutions; from the Committee on Foreign Relations; placed on the calendar.

By Mr. HATCH (for himself, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. MCCAIN, Mr. GRASSLEY, Mr. THURMOND, Mr. KYL, Mr. ABRAHAM, Mr. DEWINE, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. COLLINS, Mr. FITZGERALD, Mr. HELMS, Mr. SANTORUM, Mr. HAGEL, Mr. SHELBY, Mr. WARNER, Mr. INHOFE, Ms. SNOWE, Mr. ALLARD, Mr. BROWNBACK, Mr. GRAMS, Mr. BENNETT, Mr. COCHRAN, Mr. HUTCHINSON, and Mr. FRIST):

S. 3130. A bill to provide for post-conviction DNA testing, to facilitate the exchange by law enforcement agencies of DNA identification information relating to felony offenders, and for other purposes; to the Committee on the Judiciary.

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

S. 3131. A bill to amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians and other health care providers that are attempting to properly submit claims under the medicare program and to ensure that the Secretary targets truly fraudulent activity for enforcement of medicare billing regulations, rather than inadvertent billing errors; to the Committee on Finance.

By Mr. WARNER:

S. 3132. A bill to expand the boundary of the George Washington Birthplace National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 3133. A bill to provide compensation to producers for underestimation of wheat protein content; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BAUCUS:

S. 3134. A bill to amend the Internal Revenue Code of 1986 to provide an income tax credit for certain charitable conservation contributions of land by small farmers and ranchers, and for other purposes; to the Committee on Finance.

By Mr. CLELAND (for himself and Mr. HAGEL):

S. 3135. A bill to direct the American Folklife Center at the Library of Congress to establish a program to collect video and audio recordings of personal histories and testimonials of American war veterans, and for other purposes; to the Committee on Rules and Administration.

By Mr. DURBIN:

S. 3136. A bill for the relief of Edwardo Reyes, Dianelita Reyes, and their children, Susy Damaris Reyes, Danny Daniel Reyes, and Brandon Neil Reyes; to the Committee on the Judiciary.

By Mr. SESSIONS (for himself, Mr. BYRD, Mr. THURMOND, Mr. MOYNIHAN, Mr. WARNER, Mr. ROBB, Mr. HATCH, Mr. LEAHY, Mr. LOTT, Mr. KENNEDY, Mr. MURKOWSKI, Mr. BIDEN, Mr. HELMS, Mr. DODD, Mr. SMITH of New Hampshire, Mr. GRAHAM, Mr. INHOFE, Mr. EDWARDS, Mr. VOINOVICH, Mr. BAYH, Mr. HAGEL, Mr. MILLER, Mr. ASHCROFT, Mr. DORGAN, Mr. ALLARD, Mr. CLELAND, Mr. COCHRAN, Mr. SHELBY, Mr. MACK, Mr. BUNNING, Mr. KYL, Mr. FEINGOLD, Mr. GREGG, Mr. REID, and Mr. DOMENICI):

S. 3137. A bill to establish a commission to commemorate the 250th anniversary of the birth of James Madison; read the first time.

By Mr. GRAMS:

S. 3138. A bill to amend the Internal Revenue Code of 1986 to increase the amount and availability of the child tax credit and make the credit refundable; to the Committee on Finance.

By Mr. ABRAHAM (for himself, Mr. FEINGOLD, and Mr. KENNEDY):

S. 3139. A bill to ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien; to the Committee on the Judiciary.

By Mr. MCCONNELL (for himself and Mr. BUNNING):

S. 3140. A bill to transfer administrative jurisdiction over land of the Tennessee Valley Authority within the Daniel Boone National Forest to the Secretary of Agriculture and compensate the Authority for the transfer; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself, Mr. DODD, Mr. LEAHY, and Ms. MIKULSKI):

S.J. Res. 54. A joint resolution expressing the sense of the Congress with respect to the peace process in Northern Ireland; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

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

S. Res. 362. A resolution recognizing and honoring Roberto Clemente as a great humanitarian and an athlete of unfathomable skill; to the Committee on the Judiciary.

By Mr. KERREY:

S. Res. 363. A resolution commending the late Ernest Burgess, M.D., for his service to the Nation and the international community, and expressing the condolences of the Senate to his family on his death; considered and agreed to.

By Mr. INOUYE:

S. Con. Res. 139. A concurrent resolution authorizing the use of the Capitol grounds for the dedication of the Japanese-American Memorial to Patriotism; considered and agreed to.

By Mr. LOTT (for himself, Mr. HELMS, Mr. MURKOWSKI, Mr. KYL, Mrs. HUTCHISON, Mr. SMITH of New Hampshire, Mr. BENNETT, and Mr. HUTCHINSON):

S. Con. Res. 140. A concurrent resolution expressing the sense of Congress regarding high-level visits by Taiwanese officials to the United States; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Mr. HATCH (for himself, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. MCCAIN, Mr. GRASSLEY, Mr. THURMOND, Mr. KYL, Mr. ABRAHAM, Mr. DEWINE, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. COLLINS, Mr. FITZGERALD, Mr. HELMS, Mr. SANTORUM, Mr. HAGEL, Mr. SHELBY, Mr. WARNER, Mr. INHOFE, Ms. SNOWE, Mr. ALLARD, Mr. BROWNBACK, Mr. GRAMS, Mr. BENNETT, Mr. COCHRAN, Mr. HUTCHINSON, and Mr. FRIST):

S. 3130. A bill to provide for post-conviction DNA testing, to facilitate the exchange by law enforcement agencies of DNA identification information relating to felony offenders, and for other purposes; to the Committee on the Judiciary.

CRIMINAL JUSTICE INTEGRITY AND LAW ENFORCEMENT ASSISTANCE ACT

Mr. HATCH. Mr. President, in the last decade, DNA testing has become the most reliable forensic technique for identifying criminals when biological evidence of the crime is recovered. While DNA testing is standard in pretrial investigations today, the issue of post-conviction DNA testing has emerged in recent years as the technology for testing has improved. Because biological evidence, such as semen or hair from a rape, is often preserved by authorities years after trial, it is possible to submit preserved biological evidence for DNA testing. In cases that were tried before DNA technology existed, and in which biological evidence was preserved after conviction, post-conviction testing is feasible.

While the exact number is subject to dispute, post-conviction DNA testing has exonerated prisoners who were convicted of crimes committed before DNA technology existed. In some of these cases, the post-conviction DNA testing that exonerated a wrongly convicted person led to the apprehension of the actual criminal. In response to these cases, the Senate Judiciary Committee has examined various state post-conviction DNA statutes, held a hearing on post-conviction DNA testing, and sought the expertise of federal and state prosecutors and criminal defense lawyers.

To ensure that post-conviction DNA testing is available in appropriate cases, I, along with Senators LOTT, NICKLES, MACK, MCCAIN, THURMOND, GRASSLEY, KYL, ABRAHAM, DEWINE, SESSIONS, R. SMITH, G. SMITH, COLLINS, FITZGERALD, HELMS, SANTORUM, HAGEL,

SHELBY, WARNER, INHOFE, SNOWE, ALLARD, BROWNBACK, GRAMS, BENNETT, COCHRAN, T. HUTCHINSON, and FRIST are introducing the Criminal Justice Integrity and Law Enforcement Assistance Act today. This Act authorizes post-conviction DNA testing in federal cases and encourages the States, through a grant program, to authorize post-conviction DNA testing in a consistent manner in state cases. In addition, the Act provides $60 million in grants to help States reduce the backlog of DNA evidence to be analyzed and to conduct post-conviction DNA testing.

The Criminal Justice Integrity Act was based in large part on the successful post-conviction DNA testing statute in Illinois. The Illinois statute has worked particularly well, as Illinois has the most post-conviction DNA exonerations in the Nation. Like the Illinois statute, the Criminal Justice Integrity Act authorizes post-conviction DNA testing only in cases in which testing has the potential to prove the prisoner's innocence. This standard will allow testing in potentially meritorious cases without wasting scarce prosecutorial and judicial resources on frivolous cases. It is significant that the Illinois statute has worked well without overburdening the State's law enforcement or judicial systems.

Mr. President, given that post-conviction DNA testing is a complex legal issue, I would like to discuss the legal standard to obtain testing in the Illinois statute and in the Criminal Justice Integrity Act. While the Illinois statute is somewhat vague, several Illinois Court of Appeals decisions have interpreted the standard for obtaining post-conviction testing under the statute. See *People* v. *Gholston*, 697 N.E.2d 375 (1998); *People* v. *Dunn*, 713 N.E.2d 568 (1999); *People* v. *Savory*, 722 N.E.2d 220 (1999). As these decisions make clear, post-conviction testing is allowed under the Illinois statute only if the testing has ''the potential to establish the defendant's innocence.''

For example, in People v. Gholston, the defendant and five companions were convicted of raping a woman and assaulting and robbing her two male companions in 1981. In 1995, the defendant filed a motion to compel DNA testing of the victim's rape kit to prove that he did not participate in the gang rape. The trial court dismissed the motion for testing, and the appellate court affirmed.

In affirming the denial of testing, the court ruled that a ''negative DNA match would not exculpate defendant Gholston due to the multiple defendants involved, the lack of evidence regarding ejaculation by the defendant Gholston and defendant's own admission of guilt under a theory of accountability.'' Id. at 379.

In People v. Dunn, the defendant was convicted in 1979 of a rape in which there was only one attacker. The defendant petitioned for post-conviction relief, and the trial court dismissed the petition. On appeal, the court remanded the motion to determine whether post-conviction testing was appropriate under the Illinois statute.

In remanding the motion, the court distinguished the facts in Dunn from Gholston, noting that post-conviction testing was denied in Gholston because ''the test results could not have been conclusive of defendant's guilt or innocence.'' Id. at 571. Under the facts in Dunn, the court held that the decision in Gholston would not prevent post-conviction testing ''where DNA testing would be determinative'' of guilt or innocence. Id. The court remanded the motion to the trial court to determine ''whether any conclusive result is obtainable from DNA testing.'' Id.

The most extensive discussion of the standard for obtaining post-conviction testing under the Illinois statute occurred in People v. Savory. In Savory, the defendant was convicted of stabbing two people to death in 1977. In 1998, the defendant sought DNA testing of bloodstained pants that were recovered from his home. The trial court denied the motion for DNA testing, and the appeals court affirmed.

The court held that DNA testing on the bloodstained pants could not exonerate the defendant because a negative DNA match could merely indicate that the defendant did not wear those pants during the murders. At trial, Savory's father testified that the pants were his and that he, not the defendant, was responsible for the bloodstains. In addition, there was other, overwhelming evidence of the defendant's guilt.

The court in Savory noted that in Gholston, post-conviction testing was denied because ''DNA testing could not conclusively establish defendant's guilt or innocence.'' In discussing the Illinois statute, the court stated:

> Based on the plain language of [the Illinois statute] and on the interpretation of [the statute] in Gholston and Dunn, we believe that the legislature intended to provide a process of total vindication . . . [I]n using the term ''actual innocence,'' the legislature intended to limit the scope of the [Illinois statute], allowing for scientific testing only where it has the potential to exonerate a defendant. Id. at 224.

Under the facts in Savory, the court denied post-conviction testing because ''although DNA testing carries the possibility of weakening the State's original case against the defendant, it does not have the potential to prove him innocent.'' Id. at 225.

In short, post-conviction testing is allowed under the Illinois statute only where testing ''could be conclusive of the defendant's guilt or innocence''; only where ''DNA testing would be determinative''; only if ''any conclusive result is obtainable from DNA testing''; and only where post-conviction testing ''has the potential to exonerate a defendant.''

The Criminal Justice Integrity Act has a similar legal standard to obtain testing. The Act authorizes testing if the prisoner makes a ''prima facie showing'' that identity was at issue at trial and DNA testing would, assuming exculpatory results, establish actual innocence. A ''prima facie showing'' is a lenient requirement that is defined as ''simply a sufficient showing of possible merit to warrant a fuller exploration by the district court.'' See *Bennett* v. *U.S.*, 119 F.3d 468 (7th Cir. 1997). Thus, under the Criminal Justice Integrity Act, post-conviction testing is ordered if the prisoner makes a ''sufficient showing of possible merit'' that identity was at issue at trial and DNA testing would, assuming exculpatory results, establish actual innocence. In other words, the Act requires a showing that post-conviction testing has the potential to prove innocence. This is consistent with—and no more difficult than—the legal standard in the Illinois statute. If post-conviction DNA testing can establish a prisoner's innocence, such a prisoner can obtain testing under the Criminal Justice Integrity Act.

If post-conviction DNA testing is performed and produces exculpatory evidence, the Criminal Justice Integrity Act allows the prisoner to move for a new trial based on newly discovered evidence, notwithstanding the time limits on such motions applicable to other forms of newly discovered evidence. In so doing, the Act relies on established judicial procedures. In addition, the Criminal Justice Integrity Act prohibits authorities from destroying biological evidence which was preserved in cases in which identity was at issue for the duration of the Act, and it authorizes the court to appoint counsel for an indigent prisoner who seeks post-conviction testing.

Mr. President, the Criminal Justice Integrity and Law Enforcement Assistance Act is the only federal post-conviction DNA legislation that is supported by the law enforcement community. The Criminal Justice Integrity Act was unanimously endorsed by the bipartisan board of the National District Attorneys Association. In addition, the International Association of Chiefs of Police, the Fraternal Order of Police, and the National Sheriffs' Association have endorsed the bill. I am proud to have the support of the law enforcement community for this important legislation.

In closing, I would like to note that advanced DNA testing improves the just and fair implementation of the death penalty. While the Criminal Justice Integrity Act applies both to non-capital and capital cases, I think the Act is especially important in death penalty cases. While reasonable people can differ about capital punishment, it is indisputable that advanced DNA testing lends support and credibility to the accuracy and integrity of capital cases. For example, earlier this year, Texas Governor George W. Bush, granted a temporary reprieve to a death row inmate, Ricky McGinn, to allow post-conviction DNA testing on evidence recovered from the victim. In 1995, McGinn was convicted of raping and murdering his 12-year-old step-daughter. McGinn's lawyers had argued

that additional DNA testing could prove that McGinn did not rape the victim, and therefore, was not eligible for the death penalty.

The DNA testing was recently completed, and the test results confirmed that McGinn raped the victim, in addition to murdering her. In short, as the McGinn case demonstrates, we are in a better position than ever before to ensure that only the guilty are executed. All Americans—supporters and opponents of the death penalty alike—should recognize that DNA testing provides a powerful safeguard in capital cases. We should be thankful for this amazing technological development.

I ask unanimous consent that the endorsements of this legislation be printed in the RECORD.

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

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Albuquerque, NM, July 5, 2000.

Hon. ORRIN G. HATCH,
Chairman, Senate Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing on behalf of the more than 290,000 members of the Fraternal Order of Police to advise you of our strong support of legislation you intend to introduce entitled the ''Criminal Justice integrity and Law Enforcement Assistance Act.''

Political opponents of the death penalty have renewed their assault wrongly citing ''mistakes'' in the justice system which leads to the execution of innocent persons. One of their ploys in their effort to suspend the practice indefinitely calls for post-conviction DNA testing, a relative new technology. We find it very sad that political considerations are intruding in such a way that real justice is thwarted, not furthered.

The FOP vehemently opposes the thinly veiled political attempts to end capital punishment, like S. 2073, offered by Ranking Member Patrick J. Leahy (D–VT). This legislation would require expensive, post conviction testing in thousands of unnecessary cases such as those in which no exculpatory evidence is likely to be found. The bill places vital law enforcement funds like the Community Oriented Policing Services (COPS), the Edward J. Byrne and DNA Identification grant programs in jeopardy by requiring all states to adopt this standard. His bill would prohibit the death penalty for Federal crimes committed in certain states and provide Federal grants to nonprofit organizations subsidizing the American Civil Liberties Union's (ACLU) representation of defendants in capital cases. In essence, Senator Leahy's bill is an effort to kill the death penalty.

The legislation which you shared with us would authorize post-conviction DNA testing for a thirty (30) month period and only in a narrow class of cases where the identity of the perpetrator was at issue during trial and, assuming exculpatory results, would establish the innocence of the defendant. The FOP strongly approves of the time limitation because the issue of post-conviction testing involves only past cases where the technology was not available. DNA testing is now standard in pretrial investigations.

Your proposed legislation would also provide $60 million to the states in an effort to reduce the nationwide backlog of unanalyzed DNA samples from convicted offenders and crime scenes. In order to qualify for these grants, states must allow post-conviction testing in a manner consistent with the procedures established by this bill.

The FOP has confidence in our nation's justice system and yet recognizes that no system is ever perfect. For this reason, we support a time-limited window for post-conviction DNA testing in those few cases where innocence might be proved.

I want to thank you for sharing this draft with us and we look forward to working with you and your staff to get this legislation enacted.

Sincerely,

GILBERT G. CALLEGOS,
National President.

NATIONAL DISTRICT
ATTORNEYS ASSOCIATION,
Alexandria, VA, August 16, 2000.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN HATCH: The National District Attorneys Association, with over 7,000 members, represents the local prosecutors of this nation. Our members try, by far, the majority of criminal cases in this country and our expertise in prosecuting violent criminals is second to none—as is our dedication to protecting the innocent. In keeping with this charge, the Board of Directors of the National District Attorneys Association has voted, unanimously, to support the ''Criminal Justice Integrity and Law Enforcement Assistance Act,'' for which you serve as the primary sponsor.

New technologies, such as DNA testing, can assist in establishing guilt or innocence in cases when used appropriately. In the application of any new technology, post conviction testing must be reserved for those defendants who can actually benefit from the application of the advance of science and not merely raise spurious claims.

Testing DNA, or any other scientific evidence, is costly and requires trained technicians to collect the evidence, conduct analyses of the samples and provide the requisite records and testimony to the court. Advancing unfounded demands for post conviction tests would not only delay on going investigations and trials but also deny those truly deserving of a reassessment of the evidence in their case a timely review.

Adhering to these principles we believe that post conviction testing must be reserved for:

defendants who have consistently maintained their innocence—if the defendant has voluntarily confessed to the offense or has pled guilty then they should not have the requisite standing to challenge their guilt; and

have contested the issue of identification at tiral—DNA testing goes to the issue of identification, nothing else; and

who can make a prima facie showing that a favorable test would demonstrate their innocence.

The latter point is most crucial. In many cases an individual can be guilty of a crime, in which DNA evidence may be available, yet not have been the individual who left the evidence. For instance an individual can be convicted of rape by holding down a victim even though he never actually has intercourse or they may never have ejaculated; in a like fashion the driver of a ''get away'' car can be convicted of murder even though she never enters the convenience store.

The federal government does have a vital role to play in this effort to hasten appropriate post conviction relief in fostering the use of DNA testing but cannot, and must not, usurp state prerogatives in preserving the sanctity of their respective systems of criminal justice. If post conviction testing DNA evidence indicates potentially favorable results, the issue should be addressed, under state criminal procedures, as a timely claim of newly discovered evidence and be accorded review under normal state standards.

The legitimate role of the federal government in this effort is to encourage and assist the states in developing the means to conduct post conviction testing of scientific evidence. Given the serious, and continuing, backlog of DNA cases in particular, federal help can, and must be directed towards exponential increases in the capabilities of the state laboratory systems.

Withholding critical funding or mandating how states must use federal programs is counterproductive to the effort to obtain viable post conviction relief. Federal assistance must be devoted to permitting each state to apply resources to support and reinforce their respective systems. Moreover federal assistance must be incorporated, by the individual states, into efforts to upgrade laboratory capabilities across the board.

To be meaningful, DNA testing, and post conviction relief measures, must be truly dispositive of a defendant's guilt or innocence and not merely a pretext to stymie justice—for himself or others. The ''Criminal Justice Integrity and Law Enforcement Assistance Act'' provides for this balance of resources and we most strongly urge that it be passed by the Congress.

Sincerely,

ROBERT M.A. JOHNSON,
County Attorney, Anoka County, Minnesota, President, National District Attorneys Association.

INTERNATIONAL ASSOCIATION
OF CHIEFS OF POLICE,
Alexandria, VA, June 21, 2000.

Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the International Association of Chiefs of Police (IACP), I am writing to express our strong support for the Criminal Justice Integrity and Law Enforcement Assistance Act of 2000. As you know, the IACP is world's oldest and largest association of law enforcement executives with more than 18,000 members in 100 countries.

The use of DNA evidence represents the logical next step in technological advancement of criminal investigations and is in keeping with law enforcement's obligation to use the most advanced and accurate methods of investigating crime and proving criminal activity in a court of law. The IACP strongly supports the collection and use of DNA evidence and has consistently called for legislation that would promote greater use of DNA technology and include funding to analyze both convicted offender and crime scene DNA samples. The provisions of the Criminal Justice Integrity and Law Enforcement Assistance Act advance these goals.

Currently, more than 700,000 DNA samples taken from convicted felons and recovered from crime scenes remain unanalyzed due to the limited resources of state and local law enforcement agencies. This backlog severely threatens the timeliness of quality forensic examinations that are critical to solving crimes. By authorizing $60 million to assist states in reducing the current backlog of DNA samples the Criminal Justice Integrity and Law Enforcement Assistance Act will greatly increase the ability of state and local law enforcement agencies to make efficient and effective use of DNA evidence.

In addition, by limiting post conviction DNA tests to only those cases where the results have the potential to conclusively establish an individual's innocence of the

crime for which they were convicted, this act properly ensures that justice is served without burdening the court system and forensic laboratories with thousands of cases.

Thank you for your continued support of the nation's law enforcement agencies. We look forward to working with you on this issue of vital importance.

Sincerely,

MICHAEL D. ROBINSON,
President.

Mr. SMITH of Oregon. I am very pleased that the distinguished Senator from Utah has recognized the need to address the important issue of post-conviction DNA testing at the federal level and am proud to join his efforts. Senator HATCH's Criminal Justice Integrity and Law Enforcement Assistant Act is an excellent bill that has the strong support from law enforcement officials. It will provide much-needed funds for law enforcement authorities to analyze convicted offender DNA samples and DNA evidence gathered from crime scenes.

However, it has become abundantly clear over recent years that funding is not the only problem in the post-conviction DNA testing debate. In determining guilt and innocence, our criminal justice system occasionally makes mistakes. It is our responsibility to take every reasonable measure to prevent miscarriages of justice. Perhaps the gravest injustice that could occur is wrongful imprisonment of an innocent person. Ensuring that all defendants have access to competent counsel would go a long way to minimize the risk of unjust incarceration.

Some will say that there is no problem, or that it is so rare as to be negligible, or that we do not yet know the true extent of the problem and should not introduce legislation until we do. I strongly disagree. Although officers of America's courts and law enforcement work extremely hard to ensure that the true perpetrators of heinous crimes are caught and convicted, there have been errors that have sent innocent men to death row—innocent people like you and me who did not deserve to be there. While some states, like my home State of Oregon, work hard to ensure that defendants are represented by competent counsel, other states clearly do not. Without a federal standard, there is a real risk that innocent people tried in states without adequate standards for defense counsel could be unjustly incarcerated, or in rate cases, even sentenced to death. Setting federal standards for competent counsel for all defendants is a very reasonable step to make sure that our system of criminal justice operates fairly regardless of where you live.

Senator LEAHY and I have introduced the Innocence Protection Act, which would address the vital issue of competency of counsel, among other things. Although the Criminal Justice Integrity Act, as introduced, does not address the issue of competency of counsel, Senator HATCH has promised to work with me and others to consider this issue when any post-conviction DNA testing legislation is considered in the Senate. I commend Senator HATCH for his interest in this matter, and for his willingness to work with me to produce a bill that will truly make a good system even better.

Mr. HATCH. I promise the distinguished Senator from Oregon that I will take up this issue in the months ahead. The issue of competency of counsel for indigents in state capital cases is a difficult issue for several reasons. First, it is not clear that this is a nationwide problem. For example, in Utah and Oregon, there does not appear to be a problem concerning the representation of indigents in capital cases. Second, the anecdotal examples cited in the media of poor capital representation occurred many years ago. For example, the death penalty trial of Gary Graham, which has been repeatedly mentioned in the press, occurred in 1981. Third, the States that seem to have a problem in this area recently made improvements. In 1995, Texas Governor George W. Bush signed legislation that provided indigent capital defendants the right to have two attorneys represent them at trial. Just this year, Alabama passed a law that compensates lawyers who represent indigents in capital trials at $100 per hour.

In short, I would like to know more about the extent of this problem before I introduce legislation. Thankfully, the Bureau of Justice Statistics is releasing a comprehensive study of state indigent legal defense services in December. I am hopeful that this study will provide the information necessary to evaluate the extent of this problem. I look forward to working with Senator SMITH in the months ahead.

Mr. MURKOWSKI (for himself and Mr. ABRAHAM):

S. 3131. A bill to amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians and other health care providers that are attempting to properly submit claims under the Medicare Program and to ensure that the Secretary targets truly fraudulent activity for enforcement of medicare billing regulations, rather than inadvertent billing errors; to the Committee on Finance.

MEDICARE BILLING AND EDUCATION ACT

Mr. MURKOWSKI. Mr. President, right now, all across America, Medicare beneficiaries are seeking medical care from a flawed health care system. Reduced benefit packages, ever escalating costs, and limited access in rural areas are just a few of the problems our system faces on a daily basis. For this reason, Congress must continue to move towards the modernization of Medicare. But as we address the needs of beneficiaries, we must not turn our back upon the very providers that seniors rely upon for their care.

These providers are the physicians, the therapists, the nurses, and the allied health professionals who deliver quality care to our needy Medicare population. They are the backbone of our complex health care network. When our nation's seniors need care, it is the provider who heals, not the health insurer—and certainly not the federal government.

But more, and more often, seniors are being told by providers that they don't accept Medicare. This is becoming even more common in rural areas, where the number of physicians and access to quality care is already severely limited. Quite simply, beneficiaries are being told that their insurance is simply not wanted. Why? Well it's not as simple as low reimbursement rates. In fact it's much more complex.

The infrastructure that manages the Medicare program, the Health Care Financing Administration and its network of contractors, have built up a system designed to block care and micro-manage independent practices. Providers simply can't afford to keep up with the seemingly endless number of complex, redundant, and unnecessary regulations. And if providers do participate? Well, a simple administrative error in submitting a claim could subject them to heavy-handed audits and the financial devastation of their practice. Should we force providers to choose between protecting their practice and caring for seniors?

I believe the answer is no. For this reason, I am introducing the ''Medicare Billing and Education Act of 2000.'' Cosponsored by Senator ABRAHAM, this legislation will restore fairness to the Medicare system. It will allow providers to practice medicine without fearing the threats, intimidation, and aggressive tactics of a faceless bureaucratic machine.

Most importantly, this bill will reform the flawed appeals process within HCFA. Currently, a provider charged with receiving an overpayment is forced to choose between three options: admit the overpayment, submit additional information to mitigate the charge, or appeal the decision. However, a provider who chooses to submit additional evidence must subject their entire practice to review and waive their appeal rights. That's right—to submit additional evidence you must waive your right to an appeal!

And what is the result of this maddening system that runs contrary to our nation's history of fair and just administrative decisions? Often, providers are intimidated into accepting the arbitrary decision of an auditor employed by a HCFA contractor. Sometimes, they are even forced to pull out of the Medicare program. In the end, our senior population suffers.

Under my bill, providers will be allowed to retain their appeal rights should they choose to first submit additional evidence to mitigate the charge. Many providers receive an overpayment as the result of a simple administrative mistake. For cases not involving fraud, a provider will be able

to return that overpayment within twelve months without fear of prosecution. This is a common sense approach, and will not lead to any additional costs to the Medicare system.

To bring additional fairness to the system, my bill will prohibit the retroactive application of regulations, and allow providers to challenge the constitutionality of HCFA regulations. Further, it will prohibit the crippling recovery of overpayments during an appeal, and bar the unfair method of withholding valid future payments to recover past overpayments. These common sense measures maintain the financial viability of medical practices during the resolution of payment controversies, and restore fundamental fairness to the dispute resolution procedures existing within HCFA.

Like many of our nation's problems, the key to improvement is found in education. For this reason, I have included language that stipulates that at least ten percent of the Medicare Integrity Program funds, and two percent of carrier funds, must be devoted to provider education programs.

providers cannot be expected to comply with the endless number of Medicare regulations if they are not shown how to submit clean claims. We must ensure that providers are given the information needed to eliminate future billing errors, and improve the responsiveness of HCFA.

It is with the goal of protecting our Medicare population, and the providers who tend care, that leads me to introduce the ''Medicare Billing and Education act of 2000.'' This bill will ensure that providers are treated with the respect that they deserve, and that Medicare beneficiaries aren't told that their health insurance isn't wanted. We owe it to our nation's seniors. I urge immediate action on this worthy bill.

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

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

S. 3131

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Billing and Education Act of 2000''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—REGULATORY REFORM

Sec. 101. Prospective application of certain regulations.
Sec. 102. Requirements for judicial and regulatory challenges of regulations.
Sec. 103. Prohibition of recovering past overpayments by certain means.
Sec. 104. Prohibition of recovering past overpayments if appeal pending.

TITLE II—APPEALS PROCESS REFORMS

Sec. 201. Reform of post-payment audit process.
Sec. 202. Definitions relating to protections for physicians, suppliers, and providers of services.
Sec. 203. Right to appeal on behalf of deceased beneficiaries.

TITLE III—EDUCATION COMPONENTS

Sec. 301. Designated funding levels for provider education.
Sec. 302. Advisory opinions.

TITLE IV—SUSTAINABLE GROWTH RATE REFORMS

Sec. 401. Inclusion of regulatory costs in the calculation of the sustainable growth rate.

TITLE V—STUDIES AND REPORTS

Sec. 501. GAO audit and report on compliance with certain statutory administrative procedure requirements.
Sec. 502. GAO study and report on provider participation.
Sec. 503. GAO audit of random sample audits.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Physicians, providers of services, and suppliers of medical equipment and supplies that participate in the medicare program under title XVIII of the Social Security Act must contend with over 100,000 pages of complex medicare regulations, most of which are unknowable to the average health care provider.

(2) Many physicians are choosing to discontinue participation in the medicare program to avoid becoming the target of an overzealous Government investigation regarding compliance with the extensive regulations governing the submission and payment of medicare claims.

(3) Health Care Financing Administration contractors send post-payment review letters to physicians that require the physician to submit to additional substantial Government interference with the practice of the physician in order to preserve the physician's right to due process.

(4) When a Health Care Financing Administration contractor sends a post-payment review letter to a physician, that contractor often has no telephone or face-to-face communication with the physician, provider of services, or supplier.

(5) The Health Care Financing Administration targets billing errors as though health care providers have committed fraudulent acts, but has not adequately educated physicians, providers of services, and suppliers regarding medicare billing requirements.

(6) The Office of the Inspector General of the Department of Health and Human Services found that 75 percent of surveyed physicians had never received any educational materials from a Health Care Financing Administration contractor concerning the equipment and supply ordering process.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICABLE AUTHORITY.—The term ''applicable authority'' has the meaning given such term in section 1861(uu)(1) of the Social Security Act (as added by section 202).

(2) CARRIER.—The term ''carrier'' means a carrier (as defined in section 1842(f) of the Social Security Act (42 U.S.C. 1395u(f))) with a contract under title XVIII of such Act to administer benefits under part B of such title.

(3) EXTRAPOLATION.—The term ''extrapolation'' has the meaning given such term in section 1861(uu)(2) of the Social Security Act (as added by section 202).

(4) FISCAL INTERMEDIARY.—The term ''fiscal intermediary'' means a fiscal intermediary (as defined in section 1816(a) of the Social Security Act (42 U.S.C. 1395h(a))) with an agreement under section 1816 of such Act to administer benefits under part A or B of such title.

(5) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given the term ''eligible provider'' in section 1897(a)(2) of the Social Security Act (as added by section 301).

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

(7) PREPAYMENT REVIEW.—The term ''prepayment review'' has the meaning given such term in section 1861(uu)(3) of the Social Security Act (as added by section 202).

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

TITLE I—REGULATORY REFORM

SEC. 101. PROSPECTIVE APPLICATION OF CERTAIN REGULATIONS.

Section 1871(a) of the Social Security Act (42 U.S.C. 1395hh(a)) is amended by adding at the end the following new paragraph:

''(3) Any regulation described under paragraph (2) may not take effect earlier than the date on which such regulation becomes a final regulation. Any regulation described under such paragraph that applies to an agency action, including any agency determination, shall only apply as that regulation is in effect at the time that agency action is taken.''.

SEC. 102. REQUIREMENTS FOR JUDICIAL AND REGULATORY CHALLENGES OF REGULATIONS.

(a) RIGHT TO CHALLENGE CONSTITUTIONALITY AND STATUTORY AUTHORITY OF HCFA REGULATIONS.—Section 1872 of the Social Security Act (42 U.S.C. 1395ii) is amended to read as follows:

''APPLICATION OF CERTAIN PROVISIONS OF TITLE II

''SEC. 1872. The provisions of sections 206 and 216(j), and of subsections (a), (d), (e), (h), (i), (j), (k), and (l) of section 205, shall also apply with respect to this title to the same extent as they are applicable with respect to title II, except that—

''(1) in applying such provisions with respect to this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively; and

''(2) section 205(h) shall not apply with respect to any action brought against the Secretary under section 1331 or 1346 of title 28, United States Code, regardless of whether such action is unrelated to a specific determination of the Secretary, that challenges—

''(A) the constitutionality of substantive or interpretive rules of general applicability issued by the Secretary;

''(B) the Secretary's statutory authority to promulgate such substantive or interpretive rules of general applicability; or

''(C) a finding of good cause under subparagraph (B) of the sentence following section 553(b)(3) of title 5, United States Code, if used in the promulgation of substantive or interpretive rules of general applicability issued by the Secretary.''.

(b) CONSTRUCTION OF HEARING RIGHTS RELATING TO DETERMINATIONS BY THE SECRETARY REGARDING AGREEMENTS WITH PROVIDERS OF SERVICES.—Section 1866(h) of the Social Security Act (42 U.S.C. 1395cc(h)) is amended by adding at the end the following new paragraph:

''(3) For purposes of applying paragraph (1), an institution or agency dissatisfied with a

determination by the Secretary described in such paragraph shall be entitled to a hearing thereon regardless of whether—

''(A) such determination has been made by the Secretary or by a State pursuant to an agreement entered into with the Secretary under section 1864; or

''(B) the Secretary has imposed or may impose a remedy, penalty, or other sanction on the institution or agency in connection with such determination.''.

SEC. 103. PROHIBITION OF RECOVERING PAST OVERPAYMENTS BY CERTAIN MEANS.

(a) IN GENERAL.—Except as provided in subsection (b) and notwithstanding sections 1815(a), 1842(b), and 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C. 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii)), or any other provision of law, for purposes of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of such Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary may not offset any future payment to a health care provider to recoup a previously made overpayment, but instead shall establish a repayment plan to recoup such an overpayment.

(b) EXCEPTION.—This section shall not apply to cases in which the Secretary finds evidence of fraud or similar fault on the part of such provider.

SEC. 104. PROHIBITION OF RECOVERING PAST OVERPAYMENTS IF APPEAL PENDING.

(a) Notwithstanding any provision of law, for purposes of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of the Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary may not take any action (or authorize any other person, including any fiscal intermediary, carrier, and contractor under section 1893 of such Act (42 U.S.C. 1395ddd)) to recoup an overpayment during the period in which a health care provider is appealing a determination that such an overpayment has been made or the amount of the overpayment.

(b) Exception to this section shall not apply to cases in which the Secretary finds evidence of fraud or similar fault on the part of such provider.

TITLE II—APPEALS PROCESS REFORMS

SEC. 201. REFORM OF POST-PAYMENT AUDIT PROCESS.

(a) COMMUNICATIONS TO PHYSICIANS.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

''(u)(1)(A) Except as provided in paragraph (2), in carrying out its contract under subsection (b)(3), with respect to physicians' services, the carrier shall provide for the recoupment of overpayments in the manner described in the succeeding subparagraphs if—

''(i) the carrier or a contractor under section 1893 has not requested any relevant record or file; and

''(ii) the case has not been referred to the Department of Justice or the Office of Inspector General.

''(B)(i) During the 1-year period beginning on the date on which a physician receives an overpayment, the physician may return the overpayment to the carrier making such overpayment without any penalty.

''(ii) If a physician returns an overpayment under clause (i), neither the carrier nor the contractor under section 1893 may begin an investigation or target such physician based on any claim associated with the amount the physician has repaid.

''(C) The carrier or a contractor under section 1893 may not recoup or offset payment amounts based on extrapolation (as defined in section 1861(uu)(2)) if the physician has not been the subject of a post-payment audit.

''(D) As part of any written consent settlement communication, the carrier or a contractor under section 1893 shall clearly state that the physician may submit additional information (including evidence other than medical records) to dispute the overpayment amount without waiving any administrative remedy or right to appeal the amount of the overpayment.

''(E) As part of the administrative appeals process for any amount in controversy, a physician may directly appeal any adverse determination of the carrier or a contractor under section 1893 to an administrative law judge.

''(F)(i) Each consent settlement communication from the carrier or a contractor under section 1893 shall clearly state that prepayment review (as defined in section 1861(uu)(3)) may be imposed where the physician submits an actual or projected repayment to the carrier or a contractor under section 1893. Any prepayment review shall cease if the physician demonstrates to the carrier that the physician has properly submitted clean claims (as defined in section 1816(c)(2)(B)(i)).

''(ii) Prepayment review may not be applied as a result of an action under section 201(a), 301(b), or 302.

''(2) If a carrier or a contractor under section 1893 identifies (before or during post-payment review activities) that a physician has submitted a claim with a coding, documentation, or billing inconsistency, before sending any written communication to such physician, the carrier or a contractor under section 1893 shall contact the physician by telephone or in person at the physician's place of business during regular business hours and shall—

''(i) identify the billing anomaly;

''(ii) inform the physician of how to address the anomaly; and

''(iii) describe the type of coding or documentation that is required for the claim.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SEC. 202. DEFINITIONS RELATING TO PROTECTIONS FOR PHYSICIANS, SUPPLIERS, AND PROVIDERS OF SERVICES.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new subsection:

''Definitions Relating to Protections for Physicians, Suppliers, and Providers of Services

''(uu) For purposes of provisions of this title relating to protections for physicians, suppliers of medical equipment and supplies, and providers of services:

''(1) APPLICABLE AUTHORITY.—The term 'applicable authority' means the carrier, contractor under section 1893, or fiscal intermediary that is responsible for making any determination regarding a payment for any item or service under the medicare program under this title.

''(2) EXTRAPOLATION.—The term 'extrapolation' means the application of an overpayment dollar amount to a larger grouping of physician claims than those in the audited sample to calculate a projected overpayment figure.

''(3) PREPAYMENT REVIEW.—The term 'prepayment review' means the carriers' and fiscal intermediaries' practice of withholding claim reimbursements from eligible providers even if the claims have been properly submitted and reflect medical services provided.''.

SEC. 203. RIGHT TO APPEAL ON BEHALF OF DECEASED BENEFICIARIES.

Notwithstanding section 1870 of the Social Security Act (42 U.S.C. 1395gg) or any other provision of law, the Secretary shall permit any health care provider to appeal any determination of the Secretary under the medicare program on behalf of a deceased beneficiary where no substitute party is available.

TITLE III—EDUCATION COMPONENTS

SEC. 301. DESIGNATED FUNDING LEVELS FOR PROVIDER EDUCATION.

(a) EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF SERVICES, AND SUPPLIERS.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF SERVICES, AND SUPPLIERS

''SEC. 1897. (a) DEFINITIONS.—In this section:

''(1) EDUCATION PROGRAMS.—The term 'education programs' means programs undertaken in conjunction with Federal, State, and local medical societies, specialty societies, other providers, and the Federal, State, and local associations of such providers that—

''(A) focus on current billing, coding, cost reporting, and documentation laws, regulations, fiscal intermediary and carrier manual instructions;

''(B) place special emphasis on billing, coding, cost reporting, and documentation errors that the Secretary has found occur with the highest frequency; and

''(C) emphasize remedies for these improper billing, coding, cost reporting, and documentation practices.

''(2) ELIGIBLE PROVIDERS.—The term 'eligible provider' means a physician (as defined in section 1861(r)), a provider of services (as defined in section 1861(u)), or a supplier of medical equipment and supplies (as defined in section 1834(j)(5)).

''(b) CONDUCT OF EDUCATION PROGRAMS.—

''(1) IN GENERAL.—Carriers and fiscal intermediaries shall conduct education programs for any eligible provider that submits a claim under paragraph (2)(A).

''(2) ELIGIBLE PROVIDER EDUCATION.—

''(A) SUBMISSION OF CLAIMS AND RECORDS.—Any eligible provider may voluntarily submit any present or prior claim or medical record to the applicable authority (as defined in section 1861(uu)(1)) to determine whether the billing, coding, and documentation associated with the claim is appropriate.

''(B) PROHIBITION OF EXTRAPOLATION.—No claim submitted under subparagraph (A) is subject to any type of extrapolation (as defined in section 1861(uu)(2)).

''(c) SAFE HARBOR.—No submission of a claim or record under this section shall result in the carrier or a contractor under section 1893 beginning an investigation or targeting an individual or entity based on any claim or record submitted under such subparagraph.

''(3) TREATMENT OF IMPROPER CLAIMS.—If the carrier or fiscal intermediary finds a claim to be improper, the eligible provider shall have the following options:

''(A) CORRECTION OF PROBLEMS.—To correct the documentation, coding, or billing problem to appropriately substantiate the claim and either—

''(i) remit the actual overpayment; or

''(ii) receive the appropriate additional payment from the carrier or fiscal intermediary.

''(B) REPAYMENT.—To repay the actual overpayment amount if the service was not covered under the medicare program under this title or if adequate documentation does not exist.

''(4) PROHIBITION OF ELIGIBLE PROVIDER TRACKING.—The applicable authorities may not use the record of attendance of any eligible provider at an education program conducted under this section or the inquiry regarding claims under paragraph (2)(A) to select, identify, or track such eligible provider for the purpose of conducting any type of audit or prepayment review.''.

(b) FUNDING OF EDUCATION PROGRAMS.—

(1) MEDICARE INTEGRITY PROGRAM.—Section 1893(b)(4) of the Social Security Act (42 U.S.C. 1395ddd(b)(4)) is amended by adding at the end the following new sentence: ''No less than 10 percent of the program funds shall be devoted to the education programs for eligible providers under section 1897.''.

(2) CARRIERS.—Section 1842(b)(3)(H) of the Social Security Act (42 U.S.C. 1395u(b)(3)(H)) is amended by adding at the end the following new clause:

''(iii) No less than 2 percent of carrier funds shall be devoted to the education programs for eligible providers under section 1897.''.

(3) FISCAL INTERMEDIARIES.—Section 1816(b)(1) of the Social Security Act (42 U.S.C. 1395h(b)(1)) is amended—

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

(B) in subparagraph (B), by striking ''; and'' and inserting a comma; and

(C) by adding at the end the following new subparagraph:

''(C) that such agency or organization is using no less than 1 percent of its funding for education programs for eligible providers under section 1897.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SEC. 302. ADVISORY OPINIONS.

(a) STRAIGHT ANSWERS.—

(1) IN GENERAL.—Fiscal intermediaries and carriers shall do their utmost to provide health care providers with one, straight and correct answer regarding billing and cost reporting questions under the medicare program, and will, when requested, give their true first and last names to providers.

(2) WRITTEN REQUESTS.—

(A) IN GENERAL.—The Secretary shall establish a process under which a health care provider may request, in writing from a fiscal intermediary or carrier, assistance in addressing questionable coverage, billing, documentation, coding and cost reporting procedures under the medicare program and then the fiscal intermediary or carrier shall respond in writing within 30 business days with the correct billing or procedural answer.

(B) USE OF WRITTEN STATEMENT.—

(i) IN GENERAL.—Subject to clause (ii), a written statement under paragraph (1) may be used as proof against a future payment audit or overpayment determination under the medicare program.

(ii) EXTRAPOLATION PROHIBITION.—Subject to clause (iii), no claim submitted under this section shall be subject to extrapolation.

(iii) LIMITATION ON APPLICATION.—Clauses (i) and (ii) shall not apply to cases of fraudulent billing.

(C) SAFE HARBOR.—If a physician requests an advisory opinion under this subsection, neither the fiscal intermediary, the carrier, nor a contractor under section 1893 of the Social Security Act (42 U.S.C. 1395ddd) may begin an investigation or target such physician based on any claim cited in the request.

(b) EXTENSION OF EXISTING ADVISORY OPINION PROVISIONS OF LAW.—Section 1128D(b) of the Social Security Act (42 U.S.C. 1320a–7d(b)) is amended—

(1) in paragraph (4), by adding at the end the following new subparagraph:

''(C) SAFE HARBOR.—If a party requests an advisory opinion under this subsection, neither the fiscal intermediary, the carrier, nor a contractor under section 1893 may begin an investigation or target such party based on any claim cited in the request.''; and

(2) in paragraph (6), by striking '' and before the date which is 4 years after such date of enactment''.

TITLE IV—SUSTAINABLE GROWTH RATE REFORMS

SEC. 401. INCLUSION OF REGULATORY COSTS IN THE CALCULATION OF THE SUSTAINABLE GROWTH RATE.

(a) IN GENERAL.—Section 1848(f)(2) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)) is amended—

(1) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(2) by striking ''SPECIFICATION OF GROWTH RATE.—The sustainable growth rate'' and inserting ''SPECIFICATION OF GROWTH RATE.—

''(A) IN GENERAL.—The sustainable growth rate''; and

(3) by adding at the end the following new subparagraphs:

''(B) INCLUSION OF SGR REGULATORY COSTS.—The Secretary shall include in the estimate established under clause (iv)—

''(i) the costs for each physicians' service resulting from any regulation implemented by the Secretary during the year for which the sustainable growth rate is estimated, including those regulations that may be implemented during such year; and

''(ii) the costs described in subparagraph (C).

''(C) INCLUSION OF OTHER REGULATORY COSTS.—The costs described in this subparagraph are any per procedure costs incurred by each physicians' practice in complying with each regulation promulgated by the Secretary, regardless of whether such regulation affects the fee schedule established under subsection (b)(1).

''(D) INCLUSION OF COSTS IN REGULATORY IMPACT ANALYSES.—With respect to any regulation promulgated on or after January 1, 2001, that may impose a regulatory cost described in subparagraph (B)(i) or (C) on a physician, the Secretary shall include in the regulatory impact analysis accompanying such regulation an estimate of any such cost.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any estimate made by the Secretary of Health and Human Services on or after the date of enactment of this Act.

TITLE V—STUDIES AND REPORTS

SEC. 501. GAO AUDIT AND REPORT ON COMPLIANCE WITH CERTAIN STATUTORY ADMINISTRATIVE PROCEDURE REQUIREMENTS.

(a) AUDIT.—The Comptroller General of the United States shall conduct an audit of the compliance of the Health Care Financing Administration and all regulations promulgated by the Department of Health and Human Resources under statutes administered by the Health Care Financing Administration with—

(1) the provisions of such statutes;

(2) subchapter II of chapter 5 of title 5, United States Code (including section 553 of such title); and

(3) chapter 6 of title 5, United States Code.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the audit conducted under subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

SEC. 502. GAO STUDY AND REPORT ON PROVIDER PARTICIPATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on provider participation in the medicare program to determine whether policies or enforcement efforts against health care providers have reduced access to care for medicare beneficiaries. Such study shall include a determination of the total cost to physician, supplier, and provider practices of compliance with medicare laws and regulations, the number of physician, supplier, and provider audits, the actual overpayments assessed in consent settlements, and the attendant projected overpayments communicated to physicians, suppliers, and providers as part of the consent settlement process.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

SEC. 503. GAO AUDIT OF RANDOM SAMPLE AUDITS.

(a) AUDIT.—The Comptroller General of the United States shall conduct an audit to determine—

(1) the statistical validity of random sample audits conducted under the medicare program before the date of the enactment of this Act;

(2) the necessity of such audits for purposes of administering sections 1815(a), 1842(a), and 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C. 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii));

(3) the effects of the application of such audits to health care providers under sections 1842(b), 1866(a)(1)(B)(ii), 1870, and 1893 of such Act (42 U.S.C. 1395u(a), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd); and

(4) the percentage of claims found to be improper from these audits, as well as the proportion of the extrapolated overpayment amounts to the overpayment amounts found from the analysis of the original sample.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the audit conducted under subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

By Mr. WARNER:

S. 3132. A bill to expand the boundary of the George Washington Birthplace National Monument, and for other purposes; to the Committee on Energy and Natural Resources.se

GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT BOUNDARY ADJUSTMENT ACT OF 2000

Mr. WARNER. Mr. President, the man who would later become America's first president, George Washington, was born at Popes Creek Plantation on the banks of the Potomac River in 1732. Although most Americans are familiar with his later residence at Mt. Vernon, fewer people know that George Washington's childhood was spent on this sprawling 550 acre plantation in Westmoreland County, Virginia.

The Washington family first settled at Popes Creek in 1656 when John Washington, great-grandfather of George Washington, acquired the property. Although he later moved to Mt. Vernon, most historians agree George Washington returned on a regular basis to his birthplace. Located on the property is the Washington family cemetery that is the final resting place for

George Washington's father, grandfather, and great-grandfather. To this day, Washington family descendants continue to live in the area.

In 1930, Congress recognized the historic importance of this site to the nation and created the George Washington Birthplace National Monument. The park is truly a national treasure which tells of George Washington's formative years. In addition to providing an excellent example of colonial life, the park contains acres of woodlands, wetlands, and agricultural fields. I am told numerous bald-eagles now call the park home.

In this age of rapid development, it is remarkable that despite the passage of two hundred and sixty-eight years, the Popes Creek area is remarkably unchanged since the time of George Washington's birth. The 131,099 annual visitors to the park can still experience a rural, pastoral countryside that George Washington would recognize. Much of the credit for this bucolic atmosphere is due to the efforts of the owners of the private property surrounding the park. They have done their best to avoid developing the property adjacent to the park. But, as these landowners gradually decide they wish to sell their property, I believe the Park Service should acquire the surrounding property to preserve this historic setting for future generations. The alternative is to risk development that could forever scar this beautiful national landmark.

Today, I am introducing legislation to expand the boundary of the George Washington Birthplace National Monument by allowing the U.S. Park Service to acquire portions of the surrounding property from willing sellers. As a nation, it is our duty to preserve America's heritage for future generations. I urge my colleagues to support the preservation of George Washington's birthplace.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 3133. A bill to provide compensation to producers for underestimation of wheat protein content; to the Committee on Agriculture, Nutrition, and Forestry.

WHEAT PROTEIN MISMEASUREMENT COMPENSATION ACT

Mr. BAUCUS. Mr. President, I rise today to introduce the bill which will provide long-overdue compensation to agricultural producers in my state and across the country. The ''Wheat Protein Mismeasurement Compensation Act'' provides a legislative remedy for producers who suffered a loss due to the U.S. Department of Agriculture's erroneous underestimation of their wheat protein content for wheat sold between May 2, 1993 and January 24, 1994.

In May 1993, the Secretary of Agriculture, acting through the Federal Grain Inspection Service, required the use of new technology for determining the protein content of wheat. However, the calibrations provided by the Secretary for the new protein measurement instruments were erroneous and resulted in protein determinations that were lower than those produced by the technology in use before use of the new technology was required.

As a result of this miscalibration and the USDA's failure to provide adequate notice and opportunity for comment, hundreds of wheat producers in my state were forced to adjust their protein measurement and pricing system in order to protect themselves on resale. The result was a significant loss of revenue from the sale of high-protein wheat.

Mr. President, I have worked on this issue for several years—first as a case for my injured Montana producers. In a perfect this world, this problem would have been resolved by the USDA at an administrative level immediately after the miscalibration was identified and readjusted. Instead, it has lagged on and on and on. Unfortunately this matter for technical sovereign immunity reasons cannot be resolved in the courts. That is why we in Congress are their last chance at getting this resolved once and for all.

It is clearly, however, that these wheat producers by no fault of their own were injured by the USDA's implementation of a flawed system. But for that error, they would have received a fair price for their wheat. At a time when the agricultural community continues to suffer from record low prices and disastrous weather conditions, this continued injustice is simply unacceptable. We must do all in our power to correct this problem and justly compensate our producers for their losses.

I urge my colleagues to assist us in the expeditious passage of this legislation.

Mr. BURNS. Mr. President I rise today to join my colleague from Montana in introducing the Wheat Protein Mismeasurement Compensation Act. In 1993 the Federal Grain Inspection Service changed the technology used to determine the protein content of wheat. As a result a number of producers were harmed.

The issue has had our attention for a number of years, and has cumulated in a recent exercise over the past few months to find a resolution. The simple fact is that the USDA has failed to work with the farmers harmed so we can determine the actual financial impact to all producers. However, I am very confident we can address the losses shouldered by Montana's producers with the $465 million cap in this legislation.

My number one priority is to ensure that those producers who were harmed by the Federal Government's miscalculation are fully reimbursed for their losses. As we work this bill through the legislative process I believe we may need to readdress the section on the amount of compensation for the attorneys, but only time will tell. I believe this bill is a good step forward, and I welcome a process that will make USDA sit down face to face with these producers and compensate those that were harmed by the mismeasurements.

By Mr. BAUCUS:

S. 3134. A bill to amend the Internal Revenue Code of 1986 to provide an income tax credit for certain charitable conservation contributions of land by small farmers and ranchers, and for other purposes; to the Committee on Finance.

RURAL HERITAGE CONSERVATION ACT

Mr. BAUCUS. Mr. President, our nation's agricultural heritage is a rich tradition, which encompasses much of what we are about as a people; hard work, common sense, and a deep respect for the land.

In Montana, and in too many communities across America, our agricultural heritage is at risk. Productive farms and ranches that have been in the same family for generations are being forced to turn their back on the land they love in order to make ends meet.

I applaud our current conservation easement system and the many fine non-profit organizations that have worked with landowners across America to protect millions of acres of land. The successes have been great, but so too have the lessons.

What we have learned is that the current system does not work particularly well for working farmers and ranchers. That's why I've introduced the Rural Heritage Conservation Act, a creative approach that provides farmers and ranchers with a real incentive to preserve their, and our, agricultural heritage.

Over the past twenty-five years, over 3 million acres of agricultural land have been lost to development in Montana alone. Many of these acres were lost when family farms, hit hard by tough times, chose to give up their generations of old farming operations and sell to developers in order to pay their outstanding debts.

The measure proposed in this legislation will expand the current conservation easement tax incentive program with an eye toward making the system work better for the bulk of real, working farmers and ranchers who would like to preserve their land for future generations but for whom the current system does not provide any meaningful incentive.

Let me give you a real-life example that was presented by my good friend Jerry Townsend of Highwood Montana before the Senate Finance Committee's subcommittee on Tax and IRS oversight.

Mr. Townsend testified that when he gave a conservation easement to the Montana Land Reliance, the value of his deduction was $524,000. However, under current law, over the last five years he has only been able to save $1,858 in federal taxes. Not much of an incentive, particularly when you factor

in the $2,500 he paid for the appraisal required to complete the conservation easement process.

The Rural Heritage Conservation Act will do three things.

First, it will create a targeted, limited tax credit for farm and ranch filers who donate a conservation easement to a qualified land trust. Mr. Townsend's example is all too familiar a story to farmers and ranchers throughout America. The relatively small deduction they can obtain under current law does not in any way equate to either the potential income they have forfeited or the value the public has gained from the donation. As a result, fewer and fewer farmers and ranchers are donating conservation easements and protecting their land for future generations.

To protect against abuse, the bill calls for a cap on the total tax credit available under the program and requires that a majority of the income for the qualifying filer be from farm and ranch operations.

Second, this legislation will level the playing field for all types of agricultural filers. Current law allows C-Corps to deduct up to 10 percent of their income compared to the 30% allowed for other business types including Limited Liability Companies, Sole Proprietorships and Limited Liability Partnerships.

According to figures presented by the Montana Land Reliance, there are some 40,000 acres of land in Montana alone owned by C-Corporations, in most cases family held, that have identified the 10 percent limit as a barrier to their contributing an easement.

Third, the bill would eliminate the current provision that limits additional estate tax relief to landowners only within a 25 mile radius of a metropolitan area.

As we have discussed at some length in this very chamber, estate tax is a significant issue for many Americans, including those who live in farm and ranch households. The current radius restriction works to the financial disadvantage of people who live in states with sparse populations.

Elimination of the radius will be a significant improvement to current law and will enable many rural families to pass along to future generations family farms and ranches that are so much a part of the very heart of America.

Protecting our agricultural heritage and the land that makes it possible is good public policy. I believe that the Agricultural Heritage Preservation Act is a creative, common sense approach to improving the current conservation easement program and making it work better to meet this important goal. I'm not claiming that this approach is the ''perfect'' approach, or the only way to accomplish our goals. But it's clear that the current system does not work effectively for small farmers and ranchers and we must do more. I hope that the introduction of this bill will initiate an informed, intelligent discussion of this important matter. We must find the best way to solve this problem that threatens the conservation of our agricultural lands and rural way of life.

I hope that as we consider other land conservation initiatives and other measures to make significant changes to the estate tax system, that the changes I'm proposing in the Rural Heritage Conservation Act will be a key part of the discussion.

By Mr. GRAMS:

S. 3138. A bill to amend the Internal Revenue Code of 1986 to increase the amount and availability of the child tax credit and make the credit refundable; to the Committee on Finance.

HELPING AMERICAN FAMILIES

Mr. GRAMS. Mr. President, I will talk for a couple of minutes about one of the issues about which I am most passionate, and that is taxes, or the overtaxation of the American people in a time of surpluses, and the refusal of this Congress, this President, to even make an attempt to have meaningful tax cuts or meaningful tax relief before the end of this Congress.

In 1997, the Congress passed and the President signed into law my $500-per-child tax credit legislation. As a result, today about 40 million children in this country receive this tax credit every year, and it returns a total of about $20 billion a year in tax savings to families. That is money that families can use for savings for their children's education, for day care, for tutors, for braces, a new washer, dryer—anything—a family vacation. But it is what the family decides to spend their hard-earned money on, rather than waiting for a handout from Washington.

In fact, for the first time since the 1980s, this tax credit and other Republican-initiated tax cuts have reduced the tax burden for low- and middle-income families. I have heard many of my colleagues on the other side of the aisle bragging about how some people in the United States are paying less taxes today—and that is true—but it is mainly true because of the $500-per-child tax credit, nothing else that this administration or this Congress has done.

Despite this tax credit, the total tax burden is still way too high for working Americans. Today, let's look at an average two-income family. The median two-income family pays $26,759 in Federal, State, and local taxes. Let's compare this with back in 1992. Those taxes were $21,320 a year—a 26-percent increase in the tax burden for average families in just the last 8 years of the Clinton administration. That is according to the Nonpartisan Tax Foundation. To date, $26,759; 8 years ago, $21,320.

That shows the increase in taxes to the median-income family—not the rich of this country. They are paying more in taxes, as well. But it is the average working family that is paying the brunt of the tax increases imposed by this administration. Again, that is according to the Nonpartisan Tax Foundation. Total taxes nationwide claim 39 percent of hard-earned income, and that is more than the typical family in this country pays for food, clothing, shelter, and transportation combined.

In the past few years, over 20 million Americans earning between $30,000 and $50,000 have been pushed from the 15-percent tax bracket into the 28-percent tax bracket due to our unfair tax system. They are paying almost twice as much for those incomes, pushed from the 15-percent to the 28-percent tax bracket. As low-income and minimum wage workers work harder and pay more, their payroll taxes also increase, taking a huge bite out of their hard-earned dollars—dollars that I believe are desperately needed to keep those families above the poverty line.

Taxes collected by the Federal Government have reached 20.6 percent of all national income. That is the highest level since World War II. The government takes one-fifth of every dollar produced in this country every year. In the next 10 years, working Americans will pay taxes that will contribute to an over $2.2 trillion non-Social Security surplus. This non-Social Security surplus will be $2.2 trillion and that is even after assuming government spending is increasing along with the level and rate of inflation. This non-Social Security surplus comes from increased personal taxes and the realization of our capital gains taxes.

I believe this money should be returned to working Americans in the form of some tax relief, debt reduction, and also Social Security reform. Yes, overtaxed American families still need tax relief today. I believe using some of the non-Social Security surplus to expand the $500-per-child tax credit is one of the right things to do because Washington, again, is taking more taxes from American families at a time when it doesn't need the money as bad as families do.

I have repeatedly argued in this Chamber that the family has been and will continue to be the bedrock of our society. Strong families make strong communities, strong communities make for a strong America, and our tax policies should strengthen families and should be there to reestablish the value of families.

Between 1960 and 1985, Federal taxes on American families increased significantly. For families with 4 children, the Federal income tax rate increased 223 percent; for families with two children the rate increased 43 percent. The inflation-adjusted median income for families with children also decreased between 1973 and 1994. So its income was going down and taxes were still going up.

While the 1997 Taxpayer Relief Act, which included my $500-per-child tax

credit, has helped to change this situation, there is still room for improvement, a lot of room for a lot of improvement. For example, combined with the dependent exemption, the tax benefits for families raising children still falls well below both the inflation-adjusted value of the original dependent exemption, and also the actual cost of raising children according to Minnesota's Children Defense Fund.

In addition, this child tax credit and the income threshold for families qualifying for credit are not indexed for inflation. As a result, the value of this child tax credit would also shrink in the future and fewer families would qualify for the credit.

That is why I am introducing tonight legislation aimed at expanding the tax credit. My legislation would increase the tax credit from $500 per child to $1,000, and it would be adjusted for inflation every year. It would also index the income threshold for families qualifying for this tax credit.

While I strongly support this increase as well as the marriage penalty repeal and getting rid of the death tax, the only way we will achieve meaningful tax relief is to reform our entire tax system completely. Even my legislation today, I look at as just an interim step toward this very essential goal of having a tax system that is simple, fair, and easy to understand.

With these proposed improvements we would allow overtaxed working families with children to keep a little bit more of their own money—give them the opportunity to spend it on their own priorities, not looking for a handout from Washington, not saying they need another program from Washington, not that they want another big government approach—but allowing them to keep some of their dollars so they can make the determination on how they want to spend their money, a little bit more of their own money, to spend on their own priorities. I urge my colleagues to support this legislation.

Mr. SESSIONS. Mr. President, I say to Senator GRAMS, I think this is another insightful bit of tax relief policy you are promoting. I look forward to studying it. People think sometimes this is not possible. I don't think we stop to celebrate enough the wonderful thing that happened when, under your leadership and that of a lot of others who worked on it, we were able to provide a $500-per-child tax credit to working families in America. A mother with two children will now have, today, $1,000 more a year—nearly $80 a month with which they can buy shoes or fix the muffler on the car, take the kids on a trip or to a movie or out for a meal. It is the kind of thing that was really great. People said it could not be done and it was done.

I think these other proposals the Senator makes are realistic and also can be done.

We need to continue to work at this. The question is whether the American people are going to be able to keep this money or are we going to allow more and more to come to Washington as it grows more and more powerful and the power and wealth and independence of American citizens grows weaker and weaker.

Mr. GRAMS. The Senator from Alabama is right. If we look at it, at a time of overtaxation, when American workers are getting up every morning, working hard, and sending this money to Washington, and then it is overtaxed—we are not talking about cutting taxes at all. We are talking right now about returning some of the surplus to make sure those people who worked hard and produced this windfall get it back.

We tell our children: If you find a wallet on the street with $1,000 dollars in it, the first thing you should do is try to return it to the owner. Make sure you give the money back. Washington has found a wallet with $2.2 trillion in it, and they won't give it back. They are trying to find a way to spend it. I think our hard-working families deserve some tax credit along with debt reduction and securing Social Security, rather than leaving it for the big spenders in Washington to decide how they want to divvy up and dole out their money.

Mr. SESSIONS. I think my colleague also makes an excellent point about this percentage of the total gross domestic product. People say we cannot afford a tax cut, but we have reached record levels of a total gross domestic product that is being taken by the Government. These suggestions the Senator makes are worthwhile. We need to be working on that and the marriage penalty and the estate tax and a lot of other things around here which we can afford. I thank my colleague.

Mr. GRAMS. I thank the Senator from Alabama for his support.

Mr. MCCONNELL (for himself and Mr. BUNNING):

S. 3140. A bill to transfer administrative jurisdiction over land of the Tennessee Valley Authority within the Daniel Boone National Forest to the Secretary of Agriculture and compensate the Authority for the transfer; to the Committee on Environment and Public Works.

KENTUCKY NATIONAL FOREST LAND TRANSFER ACT OF 2000

Mr. MCCONNELL. Mr. President, I rise today to introduce the Kentucky National Forest Land Transfer Act of 2000. The purpose of this legislation is to provide an equitable solution to a problem that exists in Kentucky—specifically, to allow the Tennessee Valley Authority (TVA) to donate mineral rights, which it owns, to the Forest Service in exchange for compensation through the sale of other mineral rights in the Federal land inventory.

Mr. President, I would like to take a moment to give my colleagues some background on this issue and why this is necessary. During the 1960's, TVA purchased coal mineral rights on land that was later designated as the Daniel Boone National Forest. Today, TVA owns 40,000 acres of mineral rights under the forest.

This past July, TVA announced that it no longer had a need for these extensive mineral rights, and announced that after a 15-day comment period, it intended to auction the rights to a coal operator to mine the land. In TVA's view, this was a way to get much needed funds to pay down the $26 billion debt which they have amassed over the years. Since TVA originally had purchased the land with ratepayer funds, they were unwilling simply to donate the land, and consequently defended their proposal to auction off their rights to a coal operator by arguing that they currently have the ability to mine the land since they owned the mineral rights before the forest was created.

As you can imagine, Mr. President, this proposal hit a nerve with Kentuckians, who were quick to express their outrage at the proposition that TVA could allow mining in the Daniel Boone National Forest. The Courier-Journal, in an editorial published on August 7, 2000, wrote that TVA's proposal was a ''rush to judgment'' that failed to take the public interest into consideration. The editorial went on to say that ''the best outcome, obviously, would be for the U.S. Forest Service to control the mineral rights under the acreage that it manages. And if there are legal problems to overcome in arranging that, the auction should be held up until Congress can remove them.'' Mr. President, that is essentially what my legislation will achieve. I would like to submit the editorial for the RECORD.

Well, Mr. President, both Congress and TVA responded to the public outcry. First, Senator BUNNING offered an amendment to the Energy and Water Appropriations bill requiring TVA to conduct an Environmental Impact Study (EIS) before it could move forward on its proposal to auction off mineral rights. In response to that, a week later, TVA withdrew its auction plan, citing its concern that the proposal had sent the wrong signals. Despite these developments, the interested parties continued to press their case for transferring the mineral rights to the Forest Service, and again, I say, Mr. President, that is exactly what my bill will do.

My bill is a compromise solution that will protect the forest and protect TVA's ratepayers, by compensating TVA. This legislation is narrowly crafted to require TVA to donate the mineral rights under the Daniel Boone to the Forest Service in exchange for the right to sell other mineral rights owned by the Interior Department. Under this agreement, TVA will receive fair market value from the sale, which it can then use to reduce its burgeoning debt.

My bill has the support of TVA and the Forest Service, and is necessary in

order to implement the compromise which we have worked to achieve. This solution is based on the Mt. St. Helens National Volcanic Monument Completion Act (P.L. 105–279), which allowed for the acquisition of private mineral rights within the Monument through a swap. That legislation passed the Senate by unanimous consent. It is my hope that my colleagues will recognize the merits of my legislation and pass it with similar support.

Mr. President, we are in the waning days of the 106th Congress and time is running out to implement this carefully crafted solution, which is in the best interest of Kentucky's citizens and TVA's ratepayers. This is a win-win proposition and I urge the Senate to expeditiously consider and pass this important legislation. Mr. President, I yield the floor.

I ask unanimous consent that a copy of the bill and an editorial be printed in the RECORD.

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

S. 3140

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 ''Kentucky National Forest Land Transfer Act of 2000''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the United States owns over 40,000 acres of land and mineral rights administered by the Tennessee Valley Authority within the Daniel Boone National Forest in the State of Kentucky;

(2) the land and mineral rights were acquired by the Tennessee Valley Authority for purposes of power production using funds derived from ratepayers;

(3) the management of the land and mineral rights should be carried out in accordance with the laws governing the management of national forests; and

(4) the Tennessee Valley Authority, on behalf of the ratepayers of the Authority, should be reasonably compensated for the land and mineral rights of the Authority transferred within the Daniel Boone National Forest.

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

(1) to transfer administrative jurisdiction over land of the Tennessee Valley Authority within the Daniel Boone National Forest to the Secretary of Agriculture; and

(2) to compensate the Tennessee Valley Authority for the reasonable value of the transfer of jurisdiction.

SEC. 3. DEFINITIONS.

In this Act:

(1) COVERED LAND.—

(A) IN GENERAL.—The term ''covered land'' means all land and interests in land owned or managed by the Tennessee Valley Authority within the boundaries of the Daniel Boone National Forest in the State of Kentucky that are transferred under this Act, including surface and subsurface estates.

(B) EXCLUSIONS.—The term ''covered land'' does not include any land or interest in land owned or managed by the Tennessee Valley Authority for the transmission of water, gas, or power, including power line easements and associated facilities.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 4. TRANSFER OF ADMINISTRATIVE JURISDICTION OVER COVERED LAND.

(a) IN GENERAL.—All covered land is transferred to the administrative jurisdiction of the Secretary to be managed in accordance with the laws (including regulations) pertaining to the National Forest System.

(b) AUTHORITY OF SECRETARY OF INTERIOR OVER MINERAL RESOURCES.—The transfer of the covered land shall be subject to the authority of the Secretary of the Interior with respect to mineral resources underlying National Forest System land, including laws pertaining to mineral leasing and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

(c) SURFACE MINING.—No surface mining shall be permitted with respect to any covered land except as provided under section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)(2)).

SEC. 5. MONETARY CREDITS.

(a) IN GENERAL.—In consideration for the transfer provided under section 4, the Secretary of the Interior shall provide to the Tennessee Valley Authority monetary credits with a value of $4,000,000 that may be used for the payment of—

(1) not more than 50 percent of the bonus or other payments made by successful bidders in any sales of mineral, oil, gas, or geothermal leases in the contiguous 48 States under—

(A) the Mineral Leasing Act (30 U.S.C. 181 et seq.);

(B) the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(C) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.);

(2) not more than 10 percent of the bonus or other payments made by successful bidders in any sales of mineral, oil, gas, or geothermal leases in the State of Alaska under the laws referred to in paragraph (1);

(3) not more than 50 percent of any royalty, rental, or advance royalty payment made to the United States to maintain any mineral, oil, gas, or geothermal lease in the contiguous 48 States issued under the laws referred to in paragraph (1); or

(4) not more than 10 percent of any royalty, rental, or advance royalty payment made to the United States to maintain any mineral, oil, gas, or geothermal lease in the State of Alaska issued under the laws referred to in paragraph (1).

(b) VALUE OF CREDITS.—The total amount of credits provided under subsection (a) shall be considered equal to the fair market value of the covered land.

(c) ACCEPTANCE OF CREDITS.—

(1) IN GENERAL.—The Secretary of the Interior shall accept credits provided under subsection (a) in the same manner as cash for the payments described under subsection (a).

(2) USE OF CREDITS.—The use of the credits shall be subject to the laws (including regulations) governing such payments, to the extent the laws are consistent with this section.

(d) TREATMENT OF CREDITS FOR DISTRIBUTION TO STATES.—All credits accepted by the Secretary of the Interior under subsection (c) for the payments described in subsection (a) shall be considered to be money received for the purpose of section 35 of the Mineral Leasing Act (30 U.S.C. 191) and section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019).

(e) EXCHANGE ACCOUNT.—

(1) ESTABLISHMENT.—Notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Secretary of the Interior shall establish an exchange account for the Tennessee Valley Authority for the monetary credits provided under subsection (a).

(2) ADMINISTRATION.—The account shall—

(A) be established with the Minerals Management Service of the Department of the Interior; and

(B) have an initial balance of credits equal to $4,000,000.

(3) USE OF CREDITS.—

(A) IN GENERAL.—The credits shall be available to the Tennessee Valley Authority for the purposes described in subsection (a).

(B) ADJUSTMENT OF BALANCE.—The Secretary of the Interior shall adjust the balance of credits in the account to reflect credits accepted by the Secretary of the Interior under subsection (c).

(f) TRANSFER OR SALE OF CREDITS.—

(1) IN GENERAL.—The Tennessee Valley Authority may transfer or sell any credits in the account of the Authority to another person or entity.

(2) USE OF TRANSFERRED CREDITS.—Credits transferred or sold under paragraph (1) may be used in accordance with this subsection only by a person or entity that is qualified to bid on, or that holds, a mineral, oil, or gas lease under—

(A) the Mineral Leasing Act (30 U.S.C. 181 et seq.);

(B) the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(C) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

(3) NOTIFICATION.—

(A) IN GENERAL.—Not later than 30 days after the transfer or sale of any credits, the Tennessee Valley Authority shall notify the Secretary of the Interior of the transfer or sale.

(B) VALIDITY OF TRANSFER OR SALE.—The transfer or sale of any credit shall not be valid until the Secretary of the Interior has received the notification required under subparagraph (A).

(4) TIME LIMIT ON USE OF CREDITS.—

(A) IN GENERAL.—On the date that is 5 years after the date on which an account is established for the Tennessee Valley Authority under subsection (e), the Secretary of the Interior shall terminate the account.

(B) UNUSED CREDITS.—Any credits that originated in the terminated account and have not been used as of the termination date, including any credits transferred or sold under this subsection, shall expire.

SEC. 6. EXISTING AUTHORIZATIONS.

(a) IN GENERAL.—Nothing in this Act affects any valid existing rights under any lease, permit, or other authorization by the Tennessee Valley Authority on covered land in effect before the date of enactment of this Act.

(b) RENEWAL.—Renewal of any existing lease, permit, or other authorization on covered land shall be at the discretion of the Secretary on terms and conditions determined by the Secretary.

SEC. 7. COMPLIANCE WITH ENVIRONMENTAL LAWS.

(a) DEFINITIONS.—In this section:

(1) ENVIRONMENTAL LAW.—

(A) IN GENERAL.—The term ''environmental law'' means all applicable Federal, State, and local laws (including regulations) and requirements related to protection of human health, natural or cultural resources, or the environment.

(B) INCLUSIONS.—The term ''environmental law'' includes—

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

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

(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

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

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

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

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

(viii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

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

(2) HAZARDOUS SUBSTANCE, POLLUTANT OR CONTAMINANT, RELEASE, AND RESPONSE ACTION.—The terms ''hazardous substance'', ''pollutant or contaminant'', ''release'', and ''response action'' have the meanings given the terms in section 101 and other provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(b) DOCUMENTATION OF EXISTING CONDITIONS.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Tennessee Valley Authority shall provide the Secretary all documentation and information that exists on the environmental condition of the land and waters comprising the covered land.

(2) ADDITIONAL DOCUMENTATION.—The Tennessee Valley Authority shall provide the Secretary with any additional documentation and information regarding the environmental condition of the covered land as such documentation and information becomes available.

(c) ACTION REQUIRED.—

(1) ASSESSMENT.—Not later than 120 days after the date of enactment of this Act, the Tennessee Valley Authority shall provide to the Secretary an assessment indicating what action, if any, is required under any environmental law on covered land.

(2) MEMORANDUM OF UNDERSTANDING.—If the assessment concludes that action is required under any environmental law with respect to any portion of the covered land, the Secretary and the Tennessee Valley Authority shall enter into a memorandum of understanding that—

(A) provides for the performance by the Tennessee Valley Authority of the required actions identified in the assessment; and

(B) includes a schedule providing for the prompt completion of the required actions to the satisfaction of the Secretary.

(d) DOCUMENTATION DEMONSTRATING ACTION.—The Tennessee Valley Authority shall provide the Secretary with documentation demonstrating that all actions required under any environmental law have been taken, including all response actions that are necessary to protect human health and the environment with respect to any hazardous substance, pollutant or contaminant, hazardous waste, hazardous material, or petroleum product or derivative of a petroleum product on covered land.

(e) CONTINUATION OF RESPONSIBILITIES AND LIABILITIES.—

(1) IN GENERAL.—The transfer of covered land under this Act, and the requirements of this section, shall not affect the responsibilities and liabilities of the Tennessee Valley Authority under any environmental law.

(2) ACCESS.—The Tennessee Valley Authority shall have access to the property that may be reasonably required to carry out a responsibility or satisfy a liability referred to in paragraph (1).

(3) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the transfer of covered land under this Act as the Secretary considers to be appropriate to protect the interest of the United States concerning the continuation of any responsibilities and liabilities under any environmental law.

(4) NO EFFECT ON RESPONSIBILITIES OR LIABILITIES.—Nothing in this Act affects, directly or indirectly, the responsibilities or liabilities under any environmental law of any person with respect to the Secretary.

(f) OTHER FEDERAL AGENCIES.—Subject to the other provisions of this section, a Federal agency that carried or carries out operations on covered land resulting in the release or threatened release of a hazardous substance, pollutant or contaminant, hazardous waste, hazardous material, or petroleum product or derivative of a petroleum product for which that agency would be liable under any environmental law shall pay—

(1) the costs of related response actions; and

(2) the costs of related actions to remediate petroleum products or their derivatives.

[From the Courier-Journal, Aug. 7, 2000]

TVA'S PROPOSAL TO AUCTION BOONE FOREST MINERAL RIGHTS STINKS

The period for comment on the Tennessee Valley Authority's auction of more than 40,000 acres in mineral rights under Eastern Kentucky's Daniel Boone National Forest has just closed. But for what it's worth, we'll comment anyway: It stinks.

Talk about a rush to judgment. Comment was shut off just 15 days after TVA revealed its plan to sell.

Given that it's at least a quasi-public entity, TVA certainly ought to keep the broad public interest in mind when it makes major business decisions. TVA should be able to say what public good will result from selling these mineral rights to the highest bidder, as if they were some tax evader's living room furniture being auctioned on the courthouse steps.

TVA environmental engineer Steve Hillenbrand defends the sellout (and we do mean to invoke the word ''sellout'' in both its meanings, the ordinary and the pejorative) by saying the agency needs money. But on that basis just about any outrage could be rationalized. Obviously there needs to be some better justification.

Hillenbrand also said TVA wants out because these mineral deposits are not in the Tennessee Valley.

Odd. The distance between Eastern Kentucky's coalfields and the utility's service area never discouraged TVA's interest, or its coal buyers, before. Indeed, for decades the Kentucky River coalfield was stripped and augered, its watersheds compromised, its resources depleted, its people victimized, for coal to feed the power plants of TVA.

The story of coal barons and their work in Appalachia, on behalf of TVA, would make a great book, if Upton Sinclair or Ida Tarbell were still around to write it.

How can TVA simply turn its back on that history and depart, with the proceeds of its auction?

One newspaper story about the auction said TVA wants at least $3.5 million, and will sell only to those who agree not to strip mine. But the legalities are unclear, and protection for all the national forest land against stripping is not a sure thing. Nor would such a restriction address the potential impact of deep mining or oil-and-gas exploration, which could be devastating.

The best outcome, obviously, would be for the U.S. Forest Service to control the mineral rights under the acreage that it manages. And if there are legal problems to overcome in arranging that, the auction should be held up until Congress can remove them.

Selling mineral rights to the highest bidder is not a responsible policy. The National Citizens' Coal Law Project is right to oppose it, right to call for a full Environmental Impact Statement on the plan instead of some half-baked assessment, and right to urge that, if all else fails, only those with exemplary mining and reclamation records be allowed to bid.

ADDITIONAL COSPONSORS

S. 26

At the request of Mr. FEINGOLD, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 26, a bill entitled the ''Bipartisan Campaign Reform Act of 1999''.

S. 61

At the request of Mr. DEWINE, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.

S. 190

At the request of Mr. INOUYE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 190, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 693

At the request of Mr. HELMS, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 693, a bill to assist in the enhancement of the security of Taiwan, and for other purposes.

S. 695

At the request of Mr. CLELAND, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 695, a bill to direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in the Atlanta, Georgia, metropolitan area.

S. 1128

At the request of Mr. KYL, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1128, a bill to amend the Internal Revenue Code of 1986 to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers, to provide for a carryover basis at death, and to establish a partial capital gains exclusion for inherited assets.

S. 1277

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1277, a bill to amend title XIX of the Social Security Act to establish a new prospective payment system for Federally-qualified health centers and rural health clinics.

S. 1536

At the request of Mr. DEWINE, the names of the Senator from Louisiana (Mr. BREAUX), the Senator from Rhode Island (Mr. L. CHAFEE), and the Senator from Missouri (Mr. ASHCROFT) were added as cosponsors of S. 1536, a bill to amend the Older Americans Act of 1965 to extend authorizations of appropriations for programs under the