(Mr. COCHRAN) was added as a cosponsor of S. 393, a bill to amend the Internal Revenue Code of 1986 to encourage charitable contributions to public charities for use in medical research.

S. 435

At the request of Mrs. BOXER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 435, a bill to provide that the annual drug certification procedures under the Foreign Assistance Act of 1961 not apply to certain countries with which the United States has bilateral agreements and other plans relating to counterdrug activities, and for other purposes.

S. 465

At the request of Mr. ALLARD, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 465, a bill to amend the Internal Revenue Code of 1986 to allow a credit for residential solar energy property.

S. RES. 25

At the request of Mr. CRAIG, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Virginia (Mr. ALLEN), the Senator from Illinois (Mr. FITZGERALD), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. Res. 25, a resolution designating the week beginning March 18, 2001 as ''National Safe Place Week.''

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mrs. LINCOLN, Mr. MURKOWSKI, Ms. LANDRIEU, Mr. CRAIG, Mr. KYL, Mr. CRAPO, Mr. GRAHAM, Mr. THOMPSON, Mr. VOINOVICH, Mr. HAGEL, and Mr. INHOFE):

S. 472. A bill to ensure that nuclear energy continues to contribute to the supply of electricity in the United States; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I joined with Senator MURKOWSKI last week when he introduced the National Energy Strategy Act. His Bill addresses the broad range of issues that must underpin a credible approach to our nation's energy needs. It had key provisions for each major source of energy, including nuclear energy.

I rise today to introduce the Nuclear Energy Electricity Assurance Act of 2001, which expands and builds on the National Energy Strategy in the specific area of nuclear energy. It provides a comprehensive framework for insuring that nuclear energy remains a strong option to meet our future needs. It accomplishes for nuclear energy what Senator BYRD's National Electricity and Environmental Technology Act does for clean coal technologies, which I also support.

There is no single ''silver bullet'' that will address our nation's thirst for clean, reliable, reasonably priced, energy sources. That's why the National Energy Strategy Act carefully reinforced the importance of many energy options. Energy is far too important to our economic and military strength to rely on any small subset of the available options.

Both nuclear energy and coal are now major producers of our electricity. In fact, between them they provide over 70 percent. In both cases, their continued use presents significant risks They illustrate a fundamental point, that absolutely every source of energy presents both benefits and risks. It's our responsibility to ensure that citizens are presented with accurate information on benefits and risks, information that is free from any political biases. And where risk areas are noted, it's our responsibility to devise programs that mitigate or avoid the risks. Senator BYRD's bill does this for coal technology, my bill does this for nuclear energy.

Nuclear energy now provides about 22 percent of our electricity from 103 nuclear reactors. The operating costs of nuclear energy are among the lowest of any source. The Utility Data Institute recently reported production costs for nuclear at 1.83 cents per kw-hr, with coal at 2.08 cents per kw-hr.

Through careful optimization of operating efficiencies, the output of nuclear plants has risen dramatically since the 1980's; nuclear plants operated with an amazing 87 percent capacity factor in 2000. Since 1990, with no new nuclear plants, the output of our plants has still increased by over 20 percent. That's equivalent to gaining the output of about 20 new nuclear plants without building any.

Safety has been a vital focus, as evidenced by a constant decrease in the number of emergency shutdowns, or ''scrams,'' in our domestic plants. In 1985, there were 2.4 scrams per reactor, last year there were just 0.03. While some use the Three Mile Island accident to highlight their concerns the fact remains that our safety systems worked at Three Mile Island and no members of the public were harmed.

Another example of the exemplary safety of nuclear reactors, when properly designed and managed, lies with our nuclear navy. They now operate about 90 nuclear powered ships, and over the years, they've operated about 250 reactors in all. In that time, they've accumulated 5,400 reactor-years of operation, over twice the number of reactor-years in our civilian sector. In all that time, they have never had a significant incident with their reactors. They are welcomed into over 150 major foreign ports in over 50 countries.

Interest in our nuclear plants is increasing along with dramatically increased confidence in their ability to contribute to our energy needs. Interest in re-licensing plants, to extend their lifetime beyond the originally planned 40 years, has greatly expanded. The NRC has now approved re-licensing for 5 reactors, and over 30 other reactors have begun the renewal process. Industry experts now expect virtually all operating plants to apply for license extension.

Nuclear energy is essentially emission free. We avoided the emission of 167 million tons of carbon last year or more than 2 billion tons since the 1970's. In 1999, nuclear power plants provided about half of the total carbon reductions achieved by U.S. industry under the federal voluntary reporting program. The inescapable fact is that nuclear energy is making an immense contribution to the environmental health of our nation.

But unfortunately, when it comes to nuclear energy, we're living on our past global leadership. Most of the technologies that drive the world's nuclear energy systems originated here. Much of our early leadership derived from our requirements for a nuclear navy; that work enabled many of the civilian aspects of nuclear power.

Our reactor designs are found around the world. The reprocessing technology used in some countries originated here. The fuel designs in use around the world largely were developed here. This nation provided the global leadership to start the age of nuclear energy.

Now, our leadership is seriously at risk. No nuclear plant has been ordered in the United States in over 20 years. To some extent, this was driven by decreases in energy demand following the early oil price shocks and from public fears about Three Mile Island and Chernobyl. But we also have allowed complex environmental reviews and regulatory stalemates to extend approval and construction times and to seriously undercut prospects for any additional plants.

As a nation, we cannot afford to lose the nuclear energy option until we are ready to specify with confidence how we are going to replace 22 percent of our electricity with some other source offering comparable safety, reliability, low cost, and environmental attributes. We risk our nation's future prosperity if we lose the nuclear option through inaction. Instead, we need concrete action to secure the nuclear option for future generations. We must not subject the nation to the risk of inadequate energy supplies.

My bill is squarely aimed at avoiding this risk. I appreciate that my co-sponsors: Senators Lincoln, Murkowski, Landrieu, Craig, Graham, Kyl, Crapo, Thompson, Voinovich and Hagel share these concerns and support this bill to address them.

There are five broad aspects of this bill. First, it initiates programs to ensure that the operations of our current nuclear plants remain adequately supported. It authorizes expanded research and educational programs to ensure that we have a qualified workforce supporting nuclear issues. It sets up incentives for companies to increase the efficiency of existing plants. And it

assures that the industries supporting our domestic nuclear fuel supplies remain viable.

Second, it encourages construction of new plants, especially Generation IV plants. Technology to build these plants is close at hand. This bill not only supports research and development on these plants, it also supports development of the regulatory framework within the NRC that must be in place before they can be licensed.

Generation IV plants would

be cost competitive with natural gas, have significantly improved safety features with the goal of passive safety systems that would be immune to human errors, have reduced generation of spent fuel and nuclear waste, and have improved resistance to any possible proliferation.

In the U.S., Exelon Corporation has invested in design of a plant in South Africa that has many of these attributes.

Third, this bill has provisions to secure a level playing field for evaluation of nuclear energy relative to other energy sources. It seeks to avoid any scientifically inaccurate stigmas that have been placed on nuclear energy.

Fourth, this bill seeks to create improved solutions for managing nuclear waste. Our current national policy simply requires that we find a permanent repository for spent fuel. But spent fuel has immense residual energy. Our present plan simply assumes that future generations will be so energy-rich that they would have no interest in this major energy source.

I'm not at all sure that view serves our nation and those future generations very well. I've favored study of alternative strategies for spent fuel. As a minimum we should be doing research now to enable future generations to decide if spent fuel should still be treated as waste, or if it should be treated as a precious energy resource.

Advanced technologies for recycling spent fuel and regaining some of its energy value would also allow us to consider approaches to render the final waste form far less toxic then spent fuel. These approaches require transmutation of the long-lived radioactive species into either short-lived or stable species. This bill includes funding for a research project, based on modern accelerators, to study the economics and engineering aspects of transmutation. There is substantial interest in other countries in joining us in collaborative study of this option.

This accelerator project, almost as an added bonus, can also provide a backup source of the tritium required to maintain our nuclear stockpile. The bill provides for this application. The accelerator program, called Advanced Accelerator Applications or AAA, would also produce radioisotopes for medical purposes and would provide a great test bed for study of many nuclear engineering questions.

Before leaving the part of the bill dealing with spent fuel, let me emphasize how very compact these wastes are already and how much more compact they could be. For example, all the spent fuel rods from the last 40 years of our nation's nuclear energy production would only fill one football field to a depth of around 4 yards.

If we had encouraged reprocessing of spent fuel in this country, we would have dramatically less high level waste. In France, they reprocess spent fuel, both to reuse some of the residual energy and to extract some of the more inert components. Through their efforts, a container, smaller than two rolls of film, represents the final high level waste for a French family of four for twenty years.

And finally, the fifth and last part of this bill provides streamlining for a number of Nuclear Regulatory Commission procedures and outdated statutory restrictions.

For example, in a global energy market it makes sense to allow foreign ownership of power and research reactors located in the United States. At the same time, this amendment to the 1954 Atomic Energy Act retains U.S. security precautions in the original law.

Another amendment eliminates time-consuming and unnecessary antitrust review requirements. This section of the bill would also simplify the hearing requirements in a proceeding involving an amendment to an existing operating license or the transfer of an existing license. Further, another provision gives the NRC the authority to establish requirements to ensure that non-licensees fully comply with their obligations to fund nuclear plant decommissioning.

These and other changes to the 1954 Act will assist the NRC in its pursuit of more effective and responsive regulation of our domestic nuclear plants. These changes to the Atomic Energy Act have the support of the leadership of the NRC Chairman.

Mr. President, this bill enables nuclear energy to continue to be treated as a viable option for our nation's electricity needs. It would help ensure that future generations continue to enjoy clean, safe, reliable electricity and the many benefits that this energy source will provide.

Mr. President, I am privileged to take a little bit of the Senate's time to talk about something I think is very important. I have been working on this for a long time, but it just wasn't opportune to bring it up and give serious consideration to this issue. With the energy crisis in the United States, people are going to be able to understand that we truly have a shortage in the capacity to produce electricity, which takes care of our homes, feeds our industry, and provides a substantial portion of America's economic prosperity and growth.

So today I am going to talk about a bill I am introducing, with bipartisan support, which essentially tries to bring back to a level playing field for consideration nuclear energy and new nuclear powerplants.

This bill I am introducing is on my behalf and also for Senators LINCOLN, GRAHAM, THOMPSON, VOINOVICH, HAGEL, MURKOWSKI, LANDRIEU, CRAIG, KYL, and CRAPO, I believe I will have another 10 to 12 cosponsors soon, all of whom see the importance of the United States of America making sure we are taking care of all energy, looking out for and moving in the direction of every energy source we have that is safe and at the right level of risk, and that we proceed to develop those for America's future.

One of those that can't be left out, in my opinion, is the entire field of nuclear energy and what is needed to bring America back to a leading role in the world in terms of nuclear power and future generations of nuclear powerplants.

As a precursor to a few remarks, I want to indicate to the Senate, and those interested, that every American ought to be concerned about the fact that America doesn't have enough energy being produced to keep ourselves going at our current rate, much less at the natural growth rate that everybody expects.

My first little exhibit here is a very interesting evaluation and analysis of America's current sources of electricity at the end of 1999. (We don't have a more current one, but it hasn't changed much.) Everybody should know that in the United States coal-burning powerplants produce 51.4 percent of our electricity. Somehow or another, even though coal provides 51 percent, we aren't building very many coal powerplants because we have not moved fast enough with new technology, and there are many who don't want to build any more coal-burning plants, even if we can get their pollution down to a safe and nonrisky rate.

Then if we look at the next big source of electricity, it is nuclear energy, 19.8 percent. Might I say that while this power crisis has come about, the nuclear powerplants in the United States have been producing at a higher rate. They have produced far more electricity without adding any new plants because the regulatory schemes have become reasonable instead of unreasonable and generating capacity has risen. Capacity used to be 70 percent; it is now up to 90. Incidentally, if we had time, we would show you that even during that period of time, the safety record has become better rather than worse. We have a very interesting chart that would show that.

Let's move on. Natural gas, which we are now rapidly building, everywhere I turn and look, people are building a new powerplant with natural gas. A little bit of electricity comes from oil, 3.1 percent. And then hydroelectricity is 8.3 percent. Others sources are in yellow on the chart—and I am telling it like it is. That yellow represents 2.3 percent, solar, wind, biomass, geothermal, and others. Of that yellow, I believe solar and wind are about a half a percent of the 2.3 percent. So there are those who say we can solve our energy problem with those items that are

in yellow here. I say, good luck. Let's proceed as rapidly as we can. But I have a hunch that to increase those latter sources to a larger ratio within our energy sources, we will have a long way to go.

We would have to produce these wind fields with windmills on them beyond anything Americans expect. They expect this should not be the case if we have another way.

Understand that hydroelectricity is a small amount, but it is pretty important. Even in the last administration, they were talking about knocking down some dams so we would have less of this. Actually, that is pretty risky for America's future.

For those who are wondering where we are in terms of cost, I want to show them something. This is the electricity production costs. My good friend occupying the Chair is from Oklahoma. He produces gas and oil in his State. The best we could do is get information for the end of 1999. The distinguished Senator and those in attendance know that the natural gas price has gone up substantially since 1999. I could not bring more recent cost data because we do not have anything more current.

Since the only thing we want to use is natural gas, we have put an enormous demand on natural gas while those who supply it are struggling to keep pace. So the price of natural gas has gone up in a rather extraordinary manner. I think everybody in this Senate would agree with that. That is because the market is taking hold of a very small portion that is free to be traded and those who own it are saying: What will you pay for it?

That is going up, but even in 1999, here is what it cost Americans. The green line is nuclear power. We see that it is the lowest. In 1999, it is beginning to get even lower than coal-burning powerplants. This next line is oil. One can see it is below natural gas. These are the numbers: Nuclear, 1.83; coal, 2.07; oil, 3.18; and gas, 3.52 cents per kilowatt-hour.

Of course, just because energy is more expensive, it does not mean we should not use it, but I believe the American people over the next 10 to 25 years ought to have a mix so there is a market balance and there is some competition for these various sources of energy. I believe that is why so many Senators have joined in this bill.

I want to quickly tell you what it does. It supports nuclear energy, and it does that in many ways. The Nuclear Energy Research Initiative, called NERI, which is being funded—we are going to authorize it to make sure it continues.

Nuclear energy plant optimization is a few million dollars. This helps certification of these plants for an extended licensure period.

Incidentally, that is happening. We are relicensing them. Those who are doing that are sure they are safe. I wish I had time. I would show you relicensing versus closing them down, which some people would like. This will add an enormous amount of energy over the next 20 to 30 years. I have a chart showing that, but I will not use your time on that.

We also have nuclear energy education support. America used to be not only the leading producer of nuclear power, but we were the leader in all of the science and technology. We moved from the atom bomb to peaceful uses. The great scientists converted it and made nuclear powerplants. These plants are getting more and more modern in the world, yet America is letting our technology and our science sit still. We want to move that ahead in our universities where more people who want to choose engineering and science are given an opportunity to get into the nuclear field because it is important to America's future.

We encourage new plant construction. That will not come overnight, but it is interesting that while the United States debates an issue of what we do with the waste that comes out of the nuclear powerplants—and I am sure the occupant of the chair and most Senators if they study it carefully will clearly come down on the side that this is not a difficult problem—people who do not want nuclear power at all make it a problem. But technically, scientifically, and safetywise, it is not a problem. It is now a problem because the State of Nevada does not want it, so they are using every political means. That is their prerogative. But somehow, somewhere, America will be moving in the direction of getting that problem solved. We are working on a long-term solution.

Incidentally, in this bill we suggest and create waste solutions. We create an Office for Spent Nuclear Fuel in the Department. If you have a Department of Energy for the greatest nation on Earth, you surely ought to have within it, on its domestic side of achievements and activities, an office for research on spent nuclear fuel. Which great country would not have that except us? But we went through 15 years when we threw almost everything nuclear out of the Department of Energy, as if it were not an energy source, as if it would go away.

The spirit and energy of coming back and doing something significant is prompted because the world in the future wants to be free and wants to have production of wealth. People want to be part of a world in which the poor countries should get richer over the next 10, 20, 30 years, not poorer, and America wants to be part of that. We all have to worry about energy supplies.

In South Africa, they are moving ahead with the next generation of a nuclear powerplant that is going to be completely different from the powerplants we have today. We are sending a few people there to help with licensure and regulation, but America should be leading the way. We should be there with the scientists, engineers, and American companies moving to the next generation.

There is a next generation. It is not cooled necessarily by water. There are other ways to cool it. Incidentally, it will have passive safety features so it cannot melt down. That is the one issue everybody puts up when they say do not touch nuclear power because they want to scare us to death—it might have a meltdown. But this new powerplant cannot do that, as a matter of fundamental design parameters.

In this bill, we are going to create waste solutions. We are looking at an advanced accelerator, called AAA. We are also looking at advanced fuel recycling. Ultimately we may have a whole new way to change the quality of high-level waste through a process called transmutation. The end product will mostly no longer be high-level waste; they will be able to dispose of the products from transmutation in a very easy way.

I was talking about waste. I was going to show the Senate a container we received as a demonstration. This holds the waste from a family of four in France for 20 years—a family of four, year round for 20 years. That is the total waste they generate because they have 80 percent nuclear power. But here we are making nuclear waste the most enormous problem in the world, and letting it stop our pursuit of the cleanest, most environmentally friendly source of energy around. If we are looking at balancing environmental needs with energy, nothing beats nuclear.

We also encourage new plant construction in this bill. That means evaluation of options to complete some unfinished powerplants and Generation Four Reactors. These are the next generation. We are funding them to try to catch up.

We are also going to assure a level playing field for nuclear power. By that I mean it has not been entitled to some of the luxuries of credits in terms of clean air and the like that other forms of energy have. That is going to change.

Last, we are going to improve the NRC regulations.

I close by saying the United States has 103 nuclear powerplants producing 20 percent of our energy.

Let me state how safe nuclear power is. First, we have about 90 ships at sea that have as part of their structure one or two nuclear powerplants. I want to make sure those who are interested know about these ships sailing the seas with nuclear powerplants. I am talking about nuclear powerplants that are just like the nuclear powerplants that exist in America on this chart. They might be smaller, but they are the same and produce the same kind of power.

In 1954, we put the first one in the ocean. Today, we have them sailing everywhere with that reactor and nuclear fuel on board. Yet they are permitted to dock all around the world except

New Zealand. Does anybody believe they could dock all over the world if they were unsafe? There would be an outcry to put them 80 miles out, but they are right in the docks. They are welcome because they are absolutely safe. There has never been a nuclear accident since 1954 in the entire nuclear Navy history.

In the end, one of the issues will be what risks we take. Overall, we take fewer risks by using nuclear power than by almost any other source because we produce dramatic environmental consequences on the plus side with nuclear power.

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

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

S. 472

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 ''Nuclear Energy Electricity Supply Assurance Act of 2001''.

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

SEC. 2. FINDINGS.

Congress finds that—

(1) the standard of living for citizens of the United States is linked to the availability of reliable, low-cost, energy supplies;

(2) personal use patterns, manufacturing processes, and advanced cyber information all fuel increases in the demand for electricity;

(3) demand-side management, while important, is not likely to halt the increase in energy demand;

(4)(A) nuclear power is the largest producer of essentially emission-free electricity;

(B) nuclear energy is one of the few energy sources that controls all pollutants;

(C) nuclear plants are demonstrating excellent reliability as the plants produce power at low cost with a superb safety record; and

(D) the generation costs of nuclear power are not subject to price fluctuations of fossil fuels because nuclear fuels can be mined domestically or purchased from reliable trading partners;

(5) requirements for new highly reliable baseload generation capacity coupled with increasing environmental concerns and limited long-term availability of fossil fuels require that the United States preserve the nuclear energy option into the future;

(6) to ensure the reliability of electricity supply and delivery, the United States needs programs to encourage the extended or more efficient operation of currently existing nuclear plants and the construction of new nuclear plants;

(7) a qualified workforce is a prerequisite to continued safe operation of—

(A) nuclear plants;

(B) the nuclear navy;

(C) programs dealing with high-level or low-level waste from civilian or defense facilities; and

(D) research and medical uses of nuclear technologies;

(8) uncertainty surrounding the costs associated with regulatory approval for siting, constructing, and operating nuclear plants confuses the economics for new plant investments;

(9) to ensure the long-term reliability of supplies of nuclear fuel, the United States must ensure that the domestic uranium mining, conversion, and enrichment service industries remain viable;

(10)(A) technology developed in the United States and worldwide, broadly labeled as the Generation IV Reactor, is demonstrating that new designs of nuclear reactors are feasible;

(B) plants using the new designs would have improved safety, minimized proliferation risks, reduced spent fuel, and much lower costs; and

(C)(i) the nuclear facility infrastructure needed to conduct nuclear energy research and development in the United States has been allowed to erode over the past decade; and

(ii) that infrastructure must be restored to support development of Generation IV nuclear energy systems;

(11)(A) to ensure the long-term viability of nuclear power, the public must be confident that final waste forms resulting from spent fuel are controlled so as to have negligible impact on the environment; and

(B) continued research on repositories, and on approaches to mitigate the toxicity of materials entering any future repository, would serve that public interest; and

(12)(A) the Nuclear Regulatory Commission must continue its stewardship of the safety of our nuclear industry;

(B) at the same time, the Commission must streamline processes wherever possible to provide timely responses to a wide range of safety, upgrade, and licensing issues;

(C) the Commission should conduct research on new reactor technologies to support future regulatory decisions; and

(D) a revision of certain Commission procedures would assist in more timely processing of license applications and other requests for regulatory action.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Nuclear Regulatory Commission.

(2) EARLY SITE PERMIT.—The term ''Early Site Permit'' means a permit for a site to be a future location for a nuclear plant under subpart A of part 52 of title 10, Code of Federal Regulations.

(3) NUCLEAR PLANT.—The term ''nuclear plant'' means a nuclear energy facility that generates electricity.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

TITLE I—SUPPORT FOR CONTINUED USE OF NUCLEAR ENERGY

Subtitle A—Price-Anderson Amendments

SEC. 101. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2001''.

SEC. 102. INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES''; and

(2) by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2012''.

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking '', until August 1, 2002,''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2012''.

SEC. 103. MAXIMUM ASSESSMENT.

Section 170b.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)(1)) is amended in the second proviso of the third sentence by striking ''$10,000,000'' and inserting ''$20,000,000''.

SEC. 104. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) AGGREGATE LIABILITY LIMIT.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) LIABILITY LIMIT.—In an agreement of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain the financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (3) and inserting the following:

''(3) CONTRACT AMENDMENTS.—All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2001, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on that date.''.

SEC. 105. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 106. REPORTS.

Section 170p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''August 1, 2008''.

SEC. 107. INFLATION ADJUSTMENT.

Section 170t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by designating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

''(2) ADJUSTMENT.—The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following the date of enactment of the Price-Anderson Amendments Act of 2001, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date of enactment, in the case of the first adjustment under this subsection; or

''(B) the previous adjustment under this subsection.''.

SEC. 108. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234Ab.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NONPROFIT INSTITUTIONS.—Section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a) is amended by striking subsection d. and inserting the following:

''d. Notwithstanding subsection a., no contractor, subcontractor, or supplier of the Department of Energy that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Code shall be subject to a civil penalty under this section in any fiscal year in excess of the amount of any performance fee paid by the Secretary during that fiscal year to the contractor, subcontractor, or supplier under the contract under which a violation occurs.''.

SEC. 109. APPLICABILITY.

(a) INDEMNIFICATION PROVISIONS.—The amendments made by sections 103, 104, and 105 do not apply to a nuclear incident that occurs before the date of enactment of this Act.

(b) CIVIL PENALTY PROVISIONS.—The amendments made by section 108(b) do not apply to a violation that occurs under a contract entered into before the date of enactment of this Act.

Subtitle B—Leadership of the Office of Nuclear Energy, Science, and Technology and the Office of Science

SEC. 111. ASSISTANT SECRETARIES.

(a) IN GENERAL.—Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended in the matter preceding paragraph (1) by striking ''eight'' and inserting ''ten''.

(b) FUNCTIONS.—On appointment of the 2 additional Assistant Secretaries of Energy under the amendment made by subsection (a), the Secretary shall assign—

(1) to one of the Assistant Secretaries, the functions performed by the Director of the Office of Science as of the date of enactment of this Act; and

(2) to the other, the functions performed by the Director of the Office of Nuclear Energy, Science, and Technology as of that date.

Subtitle C—Funding of Certain Department of Energy Programs

SEC. 121. ESTABLISHMENT OF PROGRAMS.

The Secretary shall establish or continue programs administered by the Office of Nuclear Energy, Science, and Technology to—

(1) support the Nuclear Energy Research Initiative, the Nuclear Energy Plant Optimization Program, and the Nuclear Energy Technology Program;

(2) encourage investments to increase the electricity capacity at commercial nuclear plants in existence on the date of enactment of this Act;

(3) ensure continued viability of a domestic capability for uranium mining, conversion, and enrichment industries; and

(4) support university nuclear engineering education research and infrastructure programs, including closely related specialties such as health physics, actinide chemistry, and material sciences.

SEC. 122. NUCLEAR ENERGY RESEARCH INITIATIVE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for a Nuclear Energy Research Initiative to be managed by the Director of the Office of Nuclear Energy, Science, and Technology for grants to be competitively awarded and subject to peer review for research relating to nuclear energy—

(1) $60,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

(b) REPORTS.—The Secretary shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate an annual report on the activities of the Nuclear Energy Research Initiative.

SEC. 123. NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for a Nuclear Energy Plant Optimization Program to be managed by the Director of the Office of Nuclear Energy, Science, and Technology for a joint program with industry cost-shared by at least 50 percent and subject to annual review by the Secretary of Energy's Nuclear Energy Research Advisory Committee—

(1) $15,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

(b) REPORTS.—The Secretary shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate an annual report on the activities of the Nuclear Energy Plant Optimization Program.

SEC. 124. UPRATING OF NUCLEAR PLANT OPERATIONS.

(a) IN GENERAL.—The Secretary, to the extent funds are available, shall reimburse costs incurred by a licensee of a nuclear plant as provided in this section.

(b) PAYMENT OF COMMISSION USER FEES.—In carrying out subsection (a), the Secretary shall reimburse all user fees incurred by a licensee of a nuclear plant for obtaining the approval of the Commission to achieve a permanent increase in the rated electricity capacity of the licensee's nuclear plant if the licensee achieves the increased capacity before December 31, 2004.

(c) PREFERENCE.—Preference shall be given by the Secretary to projects in which a single uprating operation can benefit multiple domestic nuclear power reactors.

(d) INCENTIVE PAYMENTS.—

(1) IN GENERAL.—In addition to payments made under subsection (a), the Secretary shall offer an incentive payment equal to 10 percent of the capital improvement cost resulting in a permanent increase of at least 5 percent in the rated electricity capacity of the licensee's nuclear plant if the licensee achieves the increased capacity rating before December 31, 2004.

(2) LIMITATION.—No incentive payment under paragraph (1) associated with any single nuclear unit shall exceed $1,000,000.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2002 and 2003.

SEC. 125. UNIVERSITY PROGRAMS.

(a) IN GENERAL.—The Secretary may, as provided in this section, provide grants and other forms of payment to further the national goal of producing well-educated graduates in nuclear engineering and closely related specialties that support nuclear energy

programs such as health physics, actinide chemistry, and material sciences.

(b) SUPPORT FOR UNIVERSITY RESEARCH REACTORS.—The Secretary may provide grants and other forms of payments for plant upgrading to universities in the United States that operate and maintain nuclear research reactors.

(c) SUPPORT FOR UNIVERSITY RESEARCH AND DEVELOPMENT.—The Secretary may provide grants and other forms of payment for research and development work by faculty, staff, and students associated with nuclear engineering programs and closely related specialties at universities in the United States.

(d) SUPPORT FOR NUCLEAR ENGINEERING STUDENTS AND FACULTY.—The Secretary may provide fellowships, scholarships, and other support to students and to departments of nuclear engineering and closely related specialties at universities in the United States.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $34,200,000 for fiscal year 2002, of which—

(A) $13,000,000 shall be available to carry out subsection (b);

(B) $10,200,000 shall be available to carry out subsection (c) of which not less than $2,000,000 shall be available to support health physics programs; and

(C) $11,000,000 shall be available to carry out subsection (d) of which not less than $2,000,000 shall be available to support health physics programs; and

(2) such sums as are necessary for subsequent fiscal years.

SEC. 126. PROHIBITION OF COMMERCIAL SALES OF URANIUM AND CONVERSION HELD BY THE DEPARTMENT OF ENERGY UNTIL 2006.

Section 3112(b) of the USEC Privatization Act (42 U.S.C. 2297h–10(b)) is amended by striking paragraph (2) and inserting the following:

''(2) SALE OF URANIUM HEXAFLUORIDE.—

''(A) IN GENERAL.—The Secretary shall—

''(i) sell and receive payment for the uranium hexafluoride transferred to the Secretary under paragraph (1); and

''(ii) refrain from sales of its surplus natural uranium and conversion services through 2006 (except sales or transfers to the Tennessee Valley Authority in relation to the Department's HEU or Tritium programs, minor quantities associated with site cleanup projects, or the Department of Energy research reactor sales program).

''(B) REQUIREMENTS.—Under subparagraph (A)(i), uranium hexafluoride shall be sold—

''(i) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or

''(ii) in 2006 for consumption by end users in the United States not before January 1, 2007, and in subsequent years, in volumes not to exceed 3,000,000 pounds U_3O_8 equivalent per year.''.

SEC. 127. COOPERATIVE RESEARCH AND DEVELOPMENT AND SPECIAL DEMONSTRATION PROJECTS FOR THE URANIUM MINING INDUSTRY.

There is authorized to be appropriated to the Secretary $10,000,000 for each of fiscal years 2002, 2003, and 2004 for—

(1) cooperative, cost-shared, agreements between the Department and the domestic uranium mining industry to identify, test, and develop improved in-situ leaching mining technologies, including low-cost environmental restoration technologies that may be applied to sites after completion of in-situ leaching operations; and

(2) funding for competitively selected demonstration projects with the domestic uranium mining industry relating to—

(A) enhanced production with minimal environmental impact;

(B) restoration of well fields; and

(C) decommissioning and decontamination activities.

SEC. 128. MAINTENANCE OF A VIABLE DOMESTIC URANIUM CONVERSION INDUSTRY.

(a) IN GENERAL.—For Department of Energy expenses necessary in providing to Converdyn Incorporated a payment for losses associated with providing conversion services for the production of low-enriched uranium (excluding imports related to actions taken under the United States/Russia HEU Agreement), there is authorized to be appropriated $8,000,000 for each of fiscal years 2002, 2003, and 2004.

(b) RATE.—The payment shall be at a rate, determined by the Secretary, that—

(1)(A) is based on the difference between Converdyn's costs and its sale price for providing conversion services for the production of low-enriched uranium fuel; but

(B) does not exceed the amount appropriated under subsection (a); and

(2) shall be based contingent on submission to the Secretary of a financial statement satisfactory to the Secretary that is certified by an independent auditor for each year.

(c) TIMING.—A payment under subsection (a) shall be provided as soon as practicable after receipt and verification of the financial statement submitted under subsection (b).

SEC. 129. PORTSMOUTH GASEOUS DIFFUSION PLANT.

(a) IN GENERAL.—The Secretary may proceed with actions required to place the Portsmouth gaseous diffusion plant into cold standby condition for a period of 5 years.

(b) PLANT CONDITION.—In the cold standby condition, the plant shall be in a condition that—

(1) would allow its restart, for production of 3,000,000 separative work units per year, to meet domestic demand for enrichment services; and

(2) will facilitate the future decontamination and decommissioning of the plant.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $36,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003, 2004, and 2005.

SEC. 130. NUCLEAR GENERATION REPORT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to Congress a report on the state of nuclear power generation in the United States.

(b) CONTENTS.—The report shall—

(1) provide current and historical detail regarding—

(A) the number of commercial nuclear plants and the amount of electricity generated; and

(B) the safety record of commercial nuclear plants;

(2) review the status of the relicensing process for commercial nuclear plants, including—

(A) current and anticipated applications; and

(B) for each current and anticipated application—

(i) the anticipated length of time for a license renewal application to be processed; and

(ii) the current and anticipated costs of each license renewal;

(3) assess the capability of the Commission to evaluate licenses for new advanced reactor designs and discuss the confirmatory and anticipatory research activities needed to support that capability;

(4) detail the efforts of the Commission to prepare for potential new commercial nuclear plants, including evaluation of any new plant design and the licensing process for nuclear plants;

(5) state the anticipated length of time for a new plant license to be processed and the anticipated cost of such a process; and

(6) include recommendations for improvements in each of the processes reviewed.

TITLE II—CONSTRUCTION OF NUCLEAR PLANTS

SEC. 201. ESTABLISHMENT OF PROGRAMS.

(a) SECRETARY.—The Secretary shall establish a program within the Office of Nuclear Energy, Science, and Technology to—

(1) demonstrate the Nuclear Regulatory Commission Early Site Permit process;

(2) evaluate opportunities for completion of partially constructed nuclear plants; and

(3) develop a report assessing opportunities for Generation IV reactors.

(b) COMMISSION.—The Commission shall develop a research program to support regulatory actions relating to new nuclear plant technologies.

SEC. 202. NUCLEAR PLANT COMPLETION INITIATIVE.

(a) IN GENERAL.—The Secretary shall solicit information on United States nuclear plants requiring additional capital investment before becoming operational or being returned to operation to determine which, if any, should be included in a study of the feasibility of completing and operating some or all of the nuclear plants by December 31, 2004, considering technical and economic factors.

(b) IDENTIFICATION OF UNFINISHED NUCLEAR PLANTS.—The Secretary shall convene a panel of experts to—

(1) review information obtained under subsection (a); and

(2) identify which unfinished nuclear plants should be included in a feasibility study.

(c) TECHNICAL AND ECONOMIC COMPLETION ASSESSMENT.—On completion of the identification of candidate nuclear plants under subsection (b), the Secretary shall commence a detailed technical and economic completion assessment that includes, on a unit-specific basis, all technical and economic information necessary to permit a decision on the feasibility of completing work on any or all of the nuclear plants identified under subsection (b).

(d) SOLICITATION OF PROPOSALS.—After making the results of the feasibility study under subsection (c) available to the public, the Secretary shall solicit proposals for completing construction on any or all of the nuclear plants assessed under subsection (c).

(e) SELECTION OF PROPOSALS.—

(1) IN GENERAL.—The Secretary shall reconvene the panel of experts designated under subsection (b) to review and select the nuclear plants to be pursued, taking into consideration any or all of the following factors:

(A) Location of the nuclear plant and the regional need for expanded power capability.

(B) Time to completion.

(C) Economic and technical viability for completion of the nuclear plant.

(D) Financial capability of the offeror.

(E) Extent of support from regional and State officials.

(F) Experience and past performance of the members of the offeror in siting, constructing, or operating nuclear generating facilities.

(G) Lowest cost to the Government.

(2) REGIONAL AND STATE SUPPORT.—No proposal shall be accepted without endorsement by the State Governor and by the elected governing bodies of—

(A) each political subdivision in which the nuclear plant is located; and

(B) each other political subdivision that the Secretary determines has a substantial

interest in the completion of the nuclear plant.

(f) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than June 1, 2002, the Secretary shall submit to Congress a report describing the reactors identified for completion under subsection (e).

(2) CONTENTS.—The report shall—

(A) detail the findings under each of the criteria specified in subsection (e); and

(B) include recommendations for action by Congress to authorize actions that may be initiated in fiscal year 2003 to expedite completion of the reactors.

(3) CONSIDERATIONS.—In making recommendations under paragraph (2)(B), the Secretary shall consider—

(A) the advisability of authorizing payment by the Government of Commission user fees (including consideration of the estimated cost to the Government of paying such fees); and

(B) other appropriate considerations.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $3,000,000 for fiscal year 2002.

SEC. 203. EARLY SITE PERMIT DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall initiate a program of Government/private partnership demonstration projects to encourage private sector applications to the Commission for approval of sites that are potentially suitable to be used for the construction of future nuclear power generating facilities.

(b) PROJECTS.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue a solicitation of offers for proposals from private sector entities to enter into partnerships with the Secretary to—

(1) demonstrate the Early Site Permit process; and

(2) create a bank of approved sites by December 31, 2003.

(c) CRITERIA FOR PROPOSALS.—A proposal submitted under subsection (b) shall—

(1) identify a site owned by the offeror that is suitable for the construction and operation of a new nuclear plant; and

(2) state the agreement of the offeror to pay not less than ½ of the costs of—

(A) preparation of an application to the Commission for an Early Site Permit for the site identified under paragraph (1); and

(B) review of the application by the Commission.

(d) SELECTION OF PROPOSALS.—The Secretary shall establish a competitive process to review and select the projects to be pursued, taking into consideration the following:

(1) Time to prepare the application.

(2) Site qualities or characteristics that could affect the duration of application review.

(3) The financial capability of the offeror.

(4) The experience of the offeror in siting, constructing, or operating nuclear plants.

(5) The support of regional and State officials.

(6) The need for new electricity supply in the vicinity of the site, or proximity to suitable transmission lines.

(7) Lowest cost to the Government.

(e) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with up to 3 offerors selected through the competitive process to pay not more than ½ of the costs incurred by the parties to the agreements for—

(1) preparation of an application to the Commission for an Early Site Permit for the site; and

(2) review of the application by the Commission.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2002 and 2003, to remain available until expended.

SEC. 204. NUCLEAR ENERGY TECHNOLOGY STUDY FOR GENERATION IV REACTORS.

(a) IN GENERAL.—The Secretary shall conduct a study of Generation IV nuclear energy systems, including development of a technology roadmap and performance of research and development necessary to make an informed technical decision regarding the most promising candidates for commercial deployment.

(b) UPGRADES AND ADDITIONS.—The Secretary may make upgrades or additions to the nuclear energy research facility infrastructure as needed to carry out the study under subsection (a).

(c) REACTOR CHARACTERISTICS.—To the extent practicable, in conducting the study under subsection (a), the Secretary shall study nuclear energy systems that offer the highest probability of achieving the goals for Generation IV nuclear energy systems established by the Nuclear Energy Research Advisory Committee, including—

(1) economics competitive with natural gas-fueled generators;

(2) enhanced safety features or passive safety features;

(3) substantially reduced production of high-level waste, as compared with the quantity of waste produced by reactors in operation on the date of enactment of this Act;

(4) highly proliferation resistant fuel and waste;

(5) sustainable energy generation including optimized fuel utilization; and

(6) substantially improved thermal efficiency, as compared with the thermal efficiency of reactors in operation on the date of enactment of this Act.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with—

(1) the Commission, with respect to evaluation of regulatory issues; and

(2) the International Atomic Energy Agency, with respect to international safeguards.

(d) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2002, the Secretary shall submit to Congress a report describing the results of the roadmap and plans for research and development leading to a public/private cooperative demonstration of one or more Generation IV nuclear energy systems.

(2) CONTENTS.—The report shall contain—

(A) an assessment of all available technologies;

(B) a summary of actions needed for the most promising candidates to be considered as viable commercial options within the five to ten years after the date of the report with consideration of regulatory, economic, and technical issues;

(C) a recommendation of not more than three promising Generation IV nuclear energy system concepts for further development;

(D) an evaluation of opportunities for public/private partnerships;

(E) a recommendation for structure of a public/private partnership to share in development and construction costs;

(F) a plan leading to the selection and conceptual design, by September 30, 2004, of at least one Generation IV nuclear energy system for demonstration through a public/private partnership; and

(G) a recommendation for appropriate involvement of the Commission.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $50,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

SEC. 205. RESEARCH SUPPORTING REGULATORY PROCESSES FOR NEW REACTOR TECHNOLOGIES AND DESIGNS.

(a) IN GENERAL.—The Commission shall develop a comprehensive research program to support resolution of potential licensing issues associated with new reactor concepts and new technologies that may be incorporated into new or current designs of nuclear plants.

(b) IDENTIFICATION OF CANDIDATE DESIGNS.—The Commission shall work with the Office of Nuclear Energy, Science, and Technology and the nuclear industry to identify candidate designs to be addressed by the program.

(c) ACTIVITIES TO BE INCLUDED.—The research shall include—

(1) modeling, analyses, tests, and experiments as required to provide input into total system behavior and response to hypothesized accidents; and

(2) consideration of new reactor technologies that may affect—

(A) risk-informed licensing of new plants;

(B) behavior of advanced fuels;

(C) evolving environmental considerations relative to spent fuel management and health effect standards;

(D) new technologies (such as advanced sensors, digital instrumentation, and control) and human factors that affect the application of new technology to current plants; and

(E) other emerging technical issues.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $25,000,000 for fiscal year 2002; and

(2) such sums as are necessary for subsequent fiscal years.

TITLE III—EVALUATIONS OF NUCLEAR ENERGY

SEC. 301. ENVIRONMENTALLY PREFERABLE PURCHASING.

(a) ACQUISITION.—For the purposes of Executive Order No. 13101 (3 C.F.R. 210 (1998)) and policies established by the Office of Federal Procurement Policy or other executive branch offices for the acquisition or use of environmentally preferable products (as defined in section 201 of the Executive order), electricity generated by a nuclear plant shall be considered to be an environmentally preferable product.

(b) PROCUREMENT.—No Federal procurement policy or program may—

(1) discriminate against or exclude nuclear generated electricity in making purchasing decisions; or

(2) subscribe to product certification programs or recommend product purchases that exclude nuclear electricity.

SEC. 302. EMISSION-FREE CONTROL MEASURES UNDER A STATE IMPLEMENTATION PLAN.

(a) DEFINITIONS.—In this section:

(1) CRITERIA AIR POLLUTANT.—The term ''criteria air pollutant'' means a pollutant listed under section 108(a) of the Clean Air Act (42 U.S.C. 7408(a)).

(2) EMISSION-FREE ELECTRICITY SOURCE.—The term ''emission-free electricity source'' means—

(A) a facility that generates electricity without emitting criteria pollutants, hazardous pollutants, or greenhouse gases as a result of onsite operations of the facility; and

(B) a facility that generates electricity using nuclear fuel that meets all applicable standards for radiological emissions under section 112 of the Clean Air Act (42 U.S.C. 7412).

(3) GREENHOUSE GAS.—The term ''greenhouse gas'' means a natural or anthropogenic gaseous constituent of the atmosphere that absorbs and re-emits infrared radiation.

(4) HAZARDOUS POLLUTANT.—The term ''hazardous pollutant'' has the meaning given the term in section 112(a) of the Clean Air Act (42 U.S.C. 7412(a)).

(5) IMPROVEMENT IN AVAILABILITY.—The term ''improvement in availability'' means an increase in the amount of electricity produced by an emission-free electricity source that provides a commensurate reduction in output from emitting sources.

(6) INCREASED EMISSION-FREE CAPACITY PROJECT.—The term ''increased emission-free capacity project'' means a project to construct an emission-free electricity source or increase the rated capacity of an existing emission-free electricity source.

(b) TREATMENT OF CERTAIN STATE ACTIONS AS CONTROL MEASURES.—An action taken by a State to support the continued operation of an emission-free electricity source or to support an improvement in availability or an increased emission-free capacity project shall be considered to be a control measure for the purposes of section 110(a) of the Clean Air Act (42 U.S.C. 7410(a)).

(c) ECONOMIC INCENTIVE PROGRAMS.—

(1) CRITERIA AIR POLLUTANTS AND HAZARDOUS POLLUTANTS.—Emissions of criteria air pollutants or hazardous pollutants prevented or avoided by an improvement in availability or the operation of increased emission-free capacity shall be eligible for, and may not be excluded from, incentive programs used as control measures, including programs authorizing emission trades, revolving loan funds, tax benefits, and special financing programs.

(2) GREENHOUSE GASES.—Emissions of greenhouse gases prevented or avoided by an improvement in availability or the operation of increased emission-free capacity shall be eligible for, and may not be excluded from, incentive programs used as control measures on the national, regional State, or local level.

SEC. 304. PROHIBITION OF DISCRIMINATION AGAINST EMISSION-FREE ELECTRICITY PROJECTS IN INTERNATIONAL DEVELOPMENT PROGRAMS.

(a) PROHIBITION.—No Federal funds shall be used to support a domestic or international organization engaged in the financing, development, insuring, or underwriting of electricity production facilities if the activities fail to include emission-free electricity production facility projects that use nuclear fuel.

(b) REQUEST FOR POLICIES.—The Secretary of Energy shall request copies of all written policies regarding the eligibility of emission-free nuclear electricity production facilities for funding or support from international or domestic organizations engaged in the financing, development, insuring, or underwriting of electricity production facilities, including—

(1) the Agency for International Development;

(2) the World Bank;

(3) the Overseas Private Investment Corporation;

(4) the International Monetary Fund; and

(5) the Export-Import Bank.

TITLE IV—DEVELOPMENT OF NATIONAL SPENT NUCLEAR FUEL STRATEGY

SEC. 401. FINDINGS.

Congress finds that—

(1) before the Federal Government takes any irreversible action relating to the disposal of spent nuclear fuel, Congress must determine whether the spent fuel should be treated as waste subject to permanent burial or should be considered to be an energy resource that is needed to meet future energy requirements; and

(2) national policy on spent nuclear fuel may evolve with time as improved technologies for spent fuel are developed or as national energy needs evolve.

SEC. 402. OFFICE OF SPENT NUCLEAR FUEL RESEARCH.

(a) DEFINITIONS.—In this section:

(1) ASSOCIATE DIRECTOR.—The term ''Associate Director'' means the Associate Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Spent Nuclear Fuel Research established by subsection (b).

(b) ESTABLISHMENT.—There is established an Office of Spent Nuclear Fuel Research within the Office of Nuclear Energy Science and Technology of the Department of Energy.

(c) HEAD OF OFFICE.—The Office shall be headed by the Associate Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Nuclear Energy Science and Technology, and compensated at a rate determined by applicable law.

(d) DUTIES OF THE ASSOCIATE DIRECTOR.—

(1) IN GENERAL.—The Associate Director shall be responsible for carrying out an integrated research, development, and demonstration program on technologies for treatment, recycling, and disposal of high-level nuclear radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary.

(2) PARTICIPATION.—The Associate Director shall coordinate the participation of national laboratories, universities, the commercial nuclear industry, and other organizations in the investigation of technologies for the treatment, recycling, and disposal of spent nuclear fuel and high-level radioactive waste.

(3) ACTIVITIES.—The Associate Director shall—

(A) develop a research plan to provide recommendations by 2015;

(B) identify promising technologies for the treatment, recycling, and disposal of spent nuclear fuel and high-level radioactive waste;

(C) conduct research and development activities for promising technologies;

(D) ensure that all activities include as key objectives minimization of proliferation concerns and risk to health of the general public or site workers, as well as development of cost-effective technologies;

(E) require research on both reactor- and accelerator-based transmutation systems;

(F) require research on advanced processing and separations;

(G) include participation of international collaborators in research efforts, and provide funding to a collaborator that brings unique capabilities not available in the United States if the country in which the collaborator is located is unable to provide support; and

(H) ensure that research efforts are coordinated with research on advanced fuel cycles and reactors conducted by the Office of Nuclear Energy Science and Technology.

(e) GRANT AND CONTRACT AUTHORITY.—The Secretary may make grants, or enter into contracts, for the purposes of the research projects and activities described in subsection (d)(3).

(f) REPORT.—The Associate Director shall annually submit to Congress a report on the activities and expenditures of the Office that describes the progress being made in achieving the objectives of this section.

SEC. 403. ADVANCED FUEL RECYCLING TECHNOLOGY DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Director of the Office of Nuclear Energy, Science, and Technology, shall conduct an advanced fuel recycling technology research and development program to further the availability of electrometallurgical technology as a proliferation-resistant alternative to aqueous reprocessing in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Nuclear Energy Research Advisory Committee.

(b) REPORTS.—The Secretary shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate an annual report on the activities of the advanced fuel recycling technology development program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

TITLE V—NATIONAL ACCELERATOR SITE

SEC. 501. FINDINGS.

Congress finds that—

(1)(A) high-current proton accelerators are capable of producing significant quantities of neutrons through the spallation process without using a critical assembly; and

(B) the availability of high-neutron fluences enables a wide range of missions of major national importance to be conducted;

(2)(A) public acceptance of repositories, whether for spent fuel or for final waste products from spent fuel, can be enhanced if the radio-toxicity of the materials in the repository can be reduced;

(B) transmutation of long-lived radioactive species by an intense neutron source provides an approach to such a reduction in toxicity; and

(C) research and development in this area (which, when the source of neutrons is derived from an accelerator, is called ''accelerator transmutation of waste'') should be an important part of a national spent fuel strategy;

(3)(A) nuclear weapons require a reliable source of tritium;

(B) the Department of Energy has identified production of tritium in a commercial light water reactor as the first option to be pursued;

(C) the importance of tritium supply is of sufficient magnitude that a backup technology should be demonstrated and available for rapid scale-up to full requirements;

(D) evaluation of tritium production by a high-current accelerator has been underway; and

(E) accelerator production of tritium should be demonstrated, so that the capability can be scaled up to levels required for the weapons stockpile if difficulties arise with the reactor approach;

(4)(A) radioisotopes are required in many medical procedures;

(B) research on new medical procedures is adversely affected by the limited availability of production facilities for certain radioisotopes; and

(C) high-current accelerators are an important source of radioisotopes, and are best suited for production of proton-rich isotopes; and

(5)(A) a spallation source provides a continuum of neutron energies; and

(B) the energy spectrum of neutrons can be altered and tailored to allow a wide range of experiments in support of nuclear engineering studies of alternative reactor configurations, including studies of materials that may be used in future fission or fusion systems.

SEC. 502. DEFINITIONS.

In this title:

(1) OFFICE.—The term ''Office'' means the Office of Nuclear Energy, Science, and Technology of the Department of Energy.

(2) PROGRAM.—The term ''program'' means the Advanced Accelerator Applications Program established under section 503.

(3) PROPOSAL.—The term ''proposal'' means the proposal for a location supporting the missions identified for the program developed under section 503.

SEC. 503. ADVANCED ACCELERATOR APPLICATIONS PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to be known as the ''Advanced Accelerator Applications Program''.

(b) MISSION.—The mission of the program shall include conducting scientific or engineering research, development, and demonstrations on—

(1) accelerator production of tritium as a backup technology;

(2) transmutation of spent nuclear fuel and waste;

(3) production of radioisotopes;

(4) advanced nuclear engineering concepts, including material science issues; and

(5) other applications that may be identified.

(c) ADMINISTRATION.—The program shall be administered by the Office—

(1) in consultation with the National Nuclear Security Administration, for all activities related to tritium production; and

(2) in consultation with the Office of Civilian Radioactive Waste Management, for all activities relating to the impact of waste transmutation on repository requirements.

(d) PARTICIPATION.—The Office shall encourage participation of international collaborators, industrial partners, national laboratories, and, through support for new graduate engineering and science students and professors, universities.

(e) PROPOSAL OF LOCATION.—

(1) IN GENERAL.—The Office shall develop a detailed proposal for a location supporting the missions identified for the program.

(2) CONTENTS.—The proposal shall—

(A) recommend capabilities for the accelerator and for each major research or production effort;

(B) include development of a comprehensive site plan supporting those capabilities;

(C) specify a detailed time line for construction and operation of all activities;

(D) identify opportunities for involvement of the private sector in production and use of radioisotopes;

(E) contain a recommendation for funding required to accomplish the proposal in future fiscal years; and

(F) identify required site characteristics.

(3) PRELIMINARY ENVIRONMENTAL IMPACT ASSESSMENT.—As part of the process of identification of required site characteristics, the Secretary shall undertake a preliminary environmental impact assessment of a range of sites.

(4) SUBMISSION TO CONGRESS.—Not later than March 31, 2002, the Secretary shall submit to the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate and the Committee on Science and Committee on Appropriations of the House of Representatives a report describing the proposal.

(f) COMPETITION.—

(1) IN GENERAL.—The Secretary shall use the proposal to conduct a nationwide competition among potential sites.

(2) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate and the Committee on Science and the Committee on Appropriations of the House of Representatives a report that contains an evaluation of competing proposals and a recommendation of a final site and for funding requirements to proceed with construction in future fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) PROPOSAL.—There is authorized to be appropriated for development of the proposal $20,000,000 for each of fiscal years 2002 and 2003.

(2) RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES.—There are authorized to be appropriated for research, development, and demonstration activities of the program—

(A) $120,000,000 for fiscal year 2002; and

(B) such sums as are necessary for subsequent fiscal years.

TITLE VI—NUCLEAR REGULATORY COMMISSION REFORM

SEC. 601. DEFINITIONS.

Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended—

(1) in subsection f., by striking ''Atomic Energy Commission'' and inserting ''Nuclear Regulatory Commission'';

(2) by redesignating subsection jj. as subsection ll.; and

(3) by adding at the end the following:

''jj. FEDERAL NUCLEAR OBLIGATION.—The term 'Federal nuclear obligation' means—

''(1) a nuclear decommissioning obligation;

''(2) a fee required to be paid to the Federal Government by a licensee for the storage, transportation, or disposal of spent nuclear fuel and high-level radioactive waste, including a fee required under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.); and

''(3) an assessment by the Federal Government to fund the cost of decontamination and decommissioning of uranium enrichment facilities, including an assessment required under chapter 28 of the Energy Policy Act of 1992 (42 U.S.C. 2297g).

''kk. NUCLEAR DECOMMISSIONING OBLIGATION.—The term 'nuclear decommissioning obligation' means an expense incurred to ensure the continued protection of the public from the dangers of any residual radioactivity or other hazards present at a facility at the time the facility is decommissioned, including all costs of actions required under rules, regulations and orders of the Commission for—

''(1) entombing, dismantling and decommissioning a facility; and

''(2) administrative, preparatory, security and radiation monitoring expenses associated with entombing, dismantling, and decommissioning a facility.''.

SEC. 602. OFFICE LOCATION.

Section 23 of the Atomic Energy Act of 1954 (42 U.S.C. 2033) is amended by striking ''; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia''.

SEC. 603. LICENSE PERIOD.

Section 103c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended—

(1) by striking ''c. Each such'' and inserting the following:

''c. LICENSE PERIOD.—

''(1) IN GENERAL.—Each such''; and

(2) by adding at the end the following:

''(2) COMBINED LICENSES.—In the case of a combined construction and operating license issued under section 185(b), the initial duration of the license may not exceed 40 years from the date on which the Commission finds, before operation of the facility, that the acceptance criteria required by section 185(b) are met.''.

SEC. 604. ELIMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.

(a) COMMERCIAL LICENSES.—Section 103d. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(d)) is amended by striking the second sentence.

(b) MEDICAL THERAPY AND RESEARCH AND DEVELOPMENT.—Section 104d. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(d)) is amended by striking the second sentence.

SEC. 605. ELIMINATION OF DUPLICATIVE ANTITRUST REVIEW.

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by striking subsection c. and inserting the following:

''c. CONDITIONS.—

''(1) IN GENERAL.—A condition for a grant of a license imposed by the Commission under this section in effect on the date of enactment of the Nuclear Assets Restructuring Reform Act of 2001 shall remain in effect until the condition is modified or removed by the Commission.

''(2) MODIFICATION.—If a person that is licensed to construct or operate a utilization or production facility applies for reconsideration under this section of a condition imposed in the person's license, the Commission shall conduct a proceeding, on an expedited basis, to determine whether the license condition—

''(A) is necessary to ensure compliance with section 105a.; or

''(B) should be modified or removed.''.

SEC. 606. GIFT ACCEPTANCE AUTHORITY.

(a) IN GENERAL.—Section 161g. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) is amended—

(1) by inserting ''(1)'' after ''(g)'';

(2) by striking ''this Act;'' and inserting ''this Act; or''; and

(3) by adding at the end the following:

''(2) accept, hold, utilize, and administer gifts of real and personal property (not including money) for the purpose of aiding or facilitating the work of the Commission.''.

(b) CRITERIA FOR ACCEPTANCE OF GIFTS.—

(1) IN GENERAL.—Chapter 14 of title I of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following:

''SEC. 170C. CRITERIA FOR ACCEPTANCE OF GIFTS.

''(a) IN GENERAL.—The Commission shall establish written criteria for determining whether to accept gifts under section 161g.(2).

''(b) CONSIDERATIONS.—The criteria under subsection (a) shall take into consideration whether the acceptance of a gift would compromise the integrity of, or the appearance of the integrity of, the Commission or any officer or employee of the Commission.''.

(2) CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by adding at the end of the items relating to chapter 14 the following:

''Sec. 170C. Criteria for acceptance of gifts.''.

SEC. 607. AUTHORITY OVER FORMER LICENSEES FOR DECOMMISSIONING FUNDING.

Section 161i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by inserting before the semicolon at the end the following: '', and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility''.

SEC. 608. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES.

(a) IN GENERAL.—Chapter 14 of title I of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) (as amended by section 606(b)) is amended—

(1) in section 161, by striking subsection k. and inserting the following:

''k. authorize to carry a firearm in the performance of official duties such of its members, officers, and employees, such of the employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities, and such of the employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission or in the protection of property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities, as the Commission considers necessary in the interest of the common defense and security;'' and

(2) by adding at the end the following:

''SEC. 170D. CARRYING OF FIREARMS.

''(a) AUTHORITY TO MAKE ARREST.—

''(1) IN GENERAL.—A person authorized under section 161k. to carry a firearm may, while in the performance of, and in connection with, official duties, arrest an individual without a warrant for any offense against the United States committed in the presence of the person or for any felony under the laws of the United States if the person has a reasonable ground to believe that the individual has committed or is committing such a felony.

''(2) LIMITATION.—An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to make an arrest under paragraph (1) may make an arrest only—

''(A) when the individual is within, or is in flight directly from, the area in which the offense was committed; and

''(B) in the enforcement of—

''(i) a law regarding the property of the United States in the custody of the Department of Energy, the Commission, or a contractor of the Department of Energy or Commission or a licensee or certificate holder of the Commission;

''(ii) a law applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission under section 161k.;

''(iii) a law applicable to property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

''(iv) any provision of this Act that subjects an offender to a fine, imprisonment, or both.

''(3) OTHER AUTHORITY.—The arrest authority conferred by this section is in addition to any arrest authority under other law.

''(4) GUIDELINES.—The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement section 161k. and this subsection.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) (as amended by section 7(b)(2)) is amended by adding at the end of the items relating to chapter 14 the following:

''Sec. 170D. Carrying of firearms.''.

SEC. 609. COST RECOVERY FROM GOVERNMENT AGENCIES.

Section 161w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended—

(1) by striking '', or which operates any facility regulated or certified under section 1701 or 1702,'';

(2) by striking ''483a of title 31 of the United States Code'' and inserting ''9701 of title 31, United States Code,''; and

(3) by inserting before the period at the end the following: '', and, commencing October 1, 2002, prescribe and collect from any other Government agency any fee, charge, or price that the Commission may require in accordance with section 9701 of title 31, United States Code, or any other law''.

SEC. 610. HEARING PROCEDURES.

Section 189a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)(1)) is amended by adding at the end the following:

''(C) HEARINGS.—A hearing under this section shall be conducted using informal adjudicatory procedures established under sections 553 and 555 of title 5, United States Code, unless the Commission determines that formal adjudicatory procedures are necessary—

''(i) to develop a sufficient record; or

''(ii) to achieve fairness.''.

SEC. 611. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended in the first sentence by inserting ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act'' before the period at the end.

SEC. 612. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended—

(1) in paragraph (2), by striking ''storage facility'' and inserting ''storage, treatment, or disposal facility'';

(2) in paragraph (3)—

(A) by striking ''such a utilization facility'' and inserting ''a utilization facility licensed under this Act''; and

(B) by striking ''or'' at the end;

(3) in paragraph (4)—

(A) by striking ''facility licensed'' and inserting ''or nuclear fuel fabrication facility licensed or certified''; and

(B) by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the person knows or reasonably should know that there is a significant possibility that the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;''.

SEC. 613. NUCLEAR DECOMMISSIONING OBLIGATIONS OF NONLICENSEES.

(a) IN GENERAL.—The Atomic Energy Act of 1954 is amended by inserting after section 241 (42 U.S.C. 2015) the following:

''SEC. 242. NUCLEAR DECOMMISSIONING OBLIGATIONS OF NONLICENSEES.

''(a) DEFINITION OF FACILITY.—In this section, the term 'facility' means a commercial nuclear electric generating facility for which a Federal nuclear obligation is incurred.

''(b) DECOMMISSIONING OBLIGATIONS.—After public notice and in accordance with section 181, the Commission shall establish by rule, regulation, or order any requirement that the Commission considers necessary to ensure that a person that is not a licensee (including a former licensee) complies fully with any nuclear decommissioning obligation.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by inserting after the item relating to section 241 the following:

''Sec. 242. Nuclear decommissioning obligations of nonlicensees.''.

SEC. 614. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title take effect on the date of enactment of this Act.

(b) RECOMMISSIONING AND LICENSE REMOVAL.—The amendment made by section 613 takes effect on the date that is 180 days after the date of enactment of this Act.

Mrs. LINCOLN. Mr. President, today I join Senator DOMENICI in introducing the Nuclear Energy Electricity Assurance Act of 2001. Simply put, this bill is designed to ensure that nuclear energy remains a viable energy source well into the future of this country.

The Nuclear Energy Electricity Assurance Act of 2001 has many important provisions and I will talk specifically about a couple of them today.

We should pursue innovative technologies to reduce the amount of nuclear waste that we will eventually have to store permanently in a geologic repository. Technologies such as nuclear waste reprocessing would allow us to recycle about 75 percent of the nuclear waste we have today. And there are technologies such as transmutation that would increase the percentage of recycled waste even further. This bill establishes a new national strategy for nuclear waste by creating the Office of Spent Nuclear Fuel Research and beginning the Advanced Fuel Recycling Technology Development Program within the Department of Energy to study and focus on achievable nuclear fuel reprocessing initiatives. A strong nuclear fuel reprocessing program is necessary to ensure we can make nuclear fuel a truly renewable fuel source. It simply makes sense.

In my home State of Arkansas, we have one nuclear powerplant located just outside the small town of Dardanelle. This facility has provided safe, clean, emission-free power to all Arkansans for many years, and I aim to see that it remains for many more. This bill will help ensure that this happens by providing incentive funding for utilities to invest in increased efficiency and capacity of each nuclear powerplant.

This bill takes safe, legitimate steps toward bringing more nuclear power online, providing incentives to increase nuclear power efficiency, and strengthening the pursuit of needed reprocessing technologies. I look forward to the debate on this bill and providing this Nation with a safe, economical, and environmentally safe energy supply.

Mr. MURKOWSKI. Mr. President, I rise today to congratulate Senator DOMENICI on the introduction of his very fine bill regarding nuclear energy in this country. He has been a strong advocate of strengthening and reassessing the US approach to nuclear technologies and this bill goes a long

way toward attaining these goals. Senator DOMENICI has been an active participant in all aspects of nuclear production, nonproliferation and our nation's security and has been very helpful to me in my role as Chairman of the Energy and Natural Resources Committee. He has always been supportive of efforts to deal with our nation's nuclear waste and recently co-sponsored my ''National Energy Security Act of 2001,'' a bipartisan approach to ensuring our nation's energy security.

Senator DOMENICI's bill is significant because it addresses both short-term and long-term issues. Our bills share many provisions, including: renewal of the Price-Anderson Act, authorizations for Nuclear Energy Research Initiative, NERI, Nuclear Energy Plant Optimization, NEPO, and Nuclear Energy Technology Programs, NETP, encouraging nuclear energy efficiencies, and creation of an office of spent nuclear fuel research.

Short-term goals of increasing efficiencies are especially important in a time when this country is running short of generation capacity. What is happening in California could happen elsewhere and we need to ensure we get the most of existing generation. In 1999, U.S. nuclear reactors achieved close to 90 percent efficiency. Total efficiency increases during the 1990's at existing plants was the equivalent of adding approximately twenty-three 1,000 megawatt power plants. And keep in mind, that is all clean, non-emitting generation. Despite what environmentalists want you to think, nuclear is clean. It is the largest source of U.S. emission free generation, producing approximately 70 percent of our nation's clean-burning generation in 1999.

In addition, Senator DOMENICI's bill encourages and funds long-term progress in nuclear issues. If we are to have a viable nuclear industry in the future, we must have properly educated and trained professionals. To achieve that goal, Senator DOMENICI's bill encourages education in the hard sciences by funding recommendations made by the Nuclear Energy Research Advisory Committee to support nuclear engineering. Senator DOMENICI's bill also encourages developing waste solutions, a problem that has bedeviled the industry since the first fuel rods were removed from a commercial plant. The federal government said it would take responsibility for this waste but has yet to do so. Senator DOMENICI's ''Office of Spent Nuclear Fuel Research'' would develop a national strategy for spent fuel, including the study of reprocessing and transmutation. The bill also includes authorization for advanced accelerator applications and advanced fuel recycling technology development.

Unless this nation is able to address the nuclear waste issue, we are in danger of losing the nuclear option. And in this time of increasing demand for clean, stable, reliable sources of energy, we just can't afford to lose nuclear energy. Nuclear energy is on the upswing. Four or five years ago, who would have thought we would hear talk of buying and selling plants and even building new plants. But it is happening! In this deregulated environment, nuclear plants are becoming hot commodities, if you will pardon the pun.

And US industry is actually putting its money where its mouth is. By the end of 2001, Chicago-based Exelon Corporation will have invested $15 million in a South African venture to build a pebble bed modular reactor. Designed to be simpler, safer, and cheaper than current light-water reactors, these pebble bed reactors have captured the attention of several companies and the NRC and Senator DOMENICI's bill will help to smooth the path for new reactor technologies.

If we ever hope to achieve energy security and energy independence in this country, we cannot abandon the nuclear option. It is an important and integral part of our energy mix. Our economy depends on nuclear energy. Our national security depends on nuclear energy. Our environment depends on nuclear energy. Our future depends on nuclear energy.

If we do not create reasonable energy diversity with an increased reliance on nuclear generation, we endanger ourselves, our future, and our children's future.

Ms. LANDRIEU. Mr. President, today I rise as an original co-sponsor of the Nuclear Energy Electricity Supply Assurance Act of 2001. I commend the senior Senator from New Mexico for his passion and persistence on this issue.

The U.S. is currently experiencing unusually high and volatile energy prices. Residents of my state of Louisiana as well as citizens across the country are facing abnormally high gas prices this winter and cannot pay their bills. While there are some steps we can take in the short run to help, the situation is complex in nature and any attempt at an overall solution will require a number of different remedies over the long run focusing on both the supply and demand side of the equation.

The need to increase our domestic supply of energy is apparent. One of the great strengths of the electric supply system in this country is the contribution that comes from a variety of fuels such as coal, nuclear, natural gas, hydropower, oil and renewable energy. The diversity of available fuels we have at our disposal should enable us to balance cost, availability and environmental impacts to the best advantage. Unfortunately, we have not made adequate use of this supply.

While most of the attention this winter has focused on the role of natural gas, coal and nuclear energy actually both make a larger contribution to the electricity supply system of the United States, representing approximately 55 and 20 percent respectively of our nation's electricity supply. Each of the above mentioned sources of electricity has unique advantages and disadvantages. While it would not be wise to rely too heavily on any single fuel for its electricity, we must not allow our misconceptions to dissuade us from ignoring others altogether.

One source of energy which I believe we are not making proper use of is nuclear power. There are currently 103 nuclear power plants in this country but no new plants have been ordered since 1978. Two of these plants are located in my state of Louisiana where nuclear power generates 15 percent of the electricity. We have witnessed firsthand the numerous benefits of nuclear energy.

First, nuclear energy is efficient and cost effective due to low operating costs and high plant performance. Also, nuclear energy is reliable in that it is not subject to unreliable weather or climate conditions, unpredictable cost fluctuations or dependence on foreign suppliers. Thirdly, contrary to popular perception, nuclear energy has perhaps the lowest impact on the environment including air, land, water and wildlife of any energy source because it emits no harmful gases into the environment, isolates its waste from the environment and requires less area to produce the same amount of electricity as other sources. Finally, although many people associate the issue of nuclear power with the accident at Three Mile Island in 1979, its safety record has been excellent, particularly in comparison with other major commercial energy technologies.

The bill being introduced today will help provide nuclear power with its proper place in the energy policy debate taking place in our country. Three of the more important provisions contained in this legislation are: the encouragement of new plant construction through loan guarantees to complete unfinished plants; the assurance of a level playing field for nuclear power by making it eligible for federal ''environmentally preferable'' purchasing programs and research supporting regulations for new reactor designs with proper focus on safety and efficiency.

Over the next several months the members of the United States Senate will engage in a critical debate over the future of our nation's energy policy. I look forward to participating in this discussion and advocating for the important role of nuclear power. While development of nuclear power alone will not take care of our energy needs, it should be part of the answer.

Mr. CRAIG. Mr. President, I am very pleased to stand with my friend and colleague, Senator PETE DOMENICI, as an original cosponsor of the Nuclear Energy Electricity Supply Assurance Act of 2001. Following on the heels of the introduction of the comprehensive energy bill last week, this bill takes a closer look at nuclear energy specifically and lays out a concrete plan to secure the continued viability of nuclear energy, our largest source of emissions, free electricity.

Let me also note that I am very pleased that this is a bipartisan effort. I appreciate my colleagues from across the aisle who are joining with us in acknowledging that it is vital to take steps now in support nuclear energy and thereby, help to increase our energy independence.

The Nuclear Energy Electricity Supply Assurance Act of 2001 is a package of measures which help our current energy situation by supporting nuclear energy research and development, by encouraging new plant construction, by assuring a level playing field for nuclear power by acknowledging nuclear's clean air benefits, and by improving the regulatory process. Although the bill does not explicitly address the nuclear waste repository at Yucca Mountain, the bill does create an Office of Spent Nuclear Fuel Research at the Department of Energy and provides for research into advanced nuclear fuel recycling technologies such as those being studied at Argonne National Laboratory in Idaho.

If my colleagues are wondering why it is important that we address the energy issue, they need look no further than the headlines. However, I would like to bring my colleagues' attention to a study that was recently released on the subject of energy. The Center for Strategic and International Studies here in Washington, DC, recently released its study entitled, ''The Geopolitics of Energy into the 21st Century.'' Their findings are sobering and I want to take a moment to highlight some of their conclusions. I do this to provide the global context for our energy picture and to explain why it is so critical that this nuclear energy bill and the comprehensive energy package introduced last week receive our full attention.

This study on the geopolitics of energy found that during the next 20 years, energy demand is projected to expand more than 50 percent and that electricity will continue to be the most rapidly growing sector of energy demand. Energy supply, not simply reductions in demand, will need to be expanded substantially to meet this demand growth and that the choice of primary fuel used to supply power plants will have important effects on the environment. Interestingly, this growth in demand will not be fueled primarily by the United States, as some might think. Developing economies in Asia and in Central and South America will show the greatest increase in consumption.

The study points out that although the world drew some portion of its energy supplies from unstable countries and regions throughout much of the twentieth century, by the year 2020, fully 50 percent of estimated total global oil demand will be met from countries that pose a high risk of internal instability. Furthermore, the study concludes that a crisis in one or more of the world's key energy-producing countries is highly likely at some point between now and the year 2020.

Given these predictions, I am alarmed by our current dependence on imported energy. I think it represents a very serious vulnerability in our energy picture. This situation makes it critical that the Senate act on energy legislation, to put in place the long term steps that will help us climb out of the energy deficit we find ourselves in. Problems, such as the current energy crisis, that have been years in the making will not be remedied overnight, but we need to start taking steps now to improve what we can.

Taking constructive steps to strengthen our energy picture is what the Nuclear Energy Electricity Supply Assurance Act of 2001 is about. One of the first steps to be taken, is to recognize the tremendous contribution that nuclear energy already is making to our domestic energy picture. I think my colleagues might be surprised to hear that the U.S. nuclear industry is considered the strongest in the world. Measured in terms of output, the U.S. nuclear program is as large as the programs of France and Japan combined. Nuclear energy recently replaced coal as having the lowest electricity production cost, approximately 1.83 cents.

The process for extending nuclear power plant licenses has been successfully demonstrated by the Nuclear Regulatory Commission. Two plants have been successfully relicensed and three more are in the process now. Additionally, the nuclear industry continues to improve the efficiency of its currently operating nuclear plants. During the past 10 years, these gains in efficiency have added 23,000 megawatts to the power grid. This is the equivalent of adding 23 additional 1,000 megawatt power plants. This additional power has satisfied approximately 30 percent of the growth in U.S. electricity demand during the 1990s.

What I have not mentioned in all this, is the important contribution nuclear energy makes in meeting clean air goals. If this nuclear generation were not in place, some other carbon-emitting source of generation would probably be taking its place. In fact, if you look at the portfolio of emission-free power generation in the U.S., nuclear energy comprises about 69 percent of our emission-free power, with hydroelectric power making up about 29 percent and the remaining less than 2 percent is made up by geothermal, wind and solar.

The Nuclear Energy Electricity Supply Assurance Act of 2001 will authorize the exploration of advanced nuclear reactor designs which meet the goals of being economic, having enhanced safety features, while also reducing the production of spent fuel. The development of ''Generation Four'' nuclear reactors is something I am really excited about because much of the work done so far on Generation Four reactor design has been done at the Idaho National Engineering and Environmental Laboratory and at Argonne West National Laboratory in my home state of Idaho. One of the reasons I am so optimistic about the ability of this country to tackle these tough energy challenges is the good work that I have seen coming out of our laboratories. When we unleash our best minds on these issues, really wonderful ideas come forth. That kind of creativity and initiative is what this bill is attempting to harness.

I am excited to be a part of this bill and I thank Senator DOMENICI for partnering with me early on in the development of this bill and soliciting my input. I think we have a good product. As we move forward, I am sure we will receive additional innovative ideas. That is the challenge to all of us as we address our energy crisis—bringing the best ideas to bear. This bill is a good start to that process.

By Mr. CRAPO:

S. 473. A bill to amend the Elementary and Secondary Education Act of 1965 to improve training for teachers in the use of technology; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAPO. Mr. President, I rise today to introduce the Training Teachers for Technology Act of 2001, a bill to allow states to provide assistance to local educational agencies to develop innovative professional development programs that train teachers to use technology in the classroom.

As your know, education technology can significantly improve student achievement. Congress has recognized this fact by continually voting to dramatically increase funding for education technology. In fact, in just the programs under the Elementary and Secondary Education Act, ESEA. Federal support has grown from $52.6 million in Fiscal Year 1995, to over $700 million just five years later. As we debate the upcoming reauthorization of ESEA, I will be working to support legislation that builds on the strong educational technology infrastructure already in place in school districts in nearly every state.

But we need to do more than simply place computers in classrooms. We need to provide our educators with the skills they need to incorporate evolving educational technology in the classroom. My bill does exactly that. It will encourage states to develop and implement professional development programs that train teachers in the use of technology in the classroom. Effective teaching strategies must incorporate educational technology if we are to ensure that all children have the skills they need to compete in a high-tech workplace. An investment in professional development for our teachers is an investment in our children and our future.

Specifically, the legislation I am introducing today would allow local education agencies to apply once for all teacher training technology programs within the National Challenge Grants for Technology in Education, the Technology Literacy Challenge Fund, and

Star Schools. The U.S. General Accounting Office reported that there are more than thirty federal programs, administered by five different federal agencies, which provide funding for education technology to K–12 schools. My measure would reduce the financial and paperwork burden to primarily small, poor, rural districts that don't have the resources to hire full time staff to handle grant writing for all of these different programs. Instead, schools would be able to apply once for federal technology assistance, and then combine their funds to develop a comprehensive program that integrates technology directly into the curriculum and provides professional development for teachers. My bill adopts the principles of simplicity and flexibility. This is what schools are asking for, so this is what we should give them.

My legislation helps those smaller schools that might ordinarily be unfairly disadvantaged through traditional grant programs. Idaho's public schools are excelling rapidly in their understanding of how technology can enhance the teaching and learning environments in Idaho's classrooms. I would like to extend this same empowerment to public schools throughout the nation. Investing in technology training for teachers will make a significant difference in the lives of our children.

An opportunity has arisen where we, Members of the United States Senate, are able to help many students who face unique challenges and uncertain futures. I hope you agree that a strong technology component for all students is necessary and essential in facilitating student achievement, and that through proper professional development our children will be provided an unparalleled opportunity for a better education.

I urge my colleagues to support this legislation and work for its inclusion in the reauthorization of the ESEA.

By Mr. CRAPO:

S. 474. A bill to amend the Elementary and Secondary Education Act of 1965 to improve provisions relating to initial teaching experiences and alternative routes to certification; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAPO. Mr. President, I rise today to introduce the Professional Development Enhancement Act to strengthen and improve professional development opportunities for teachers.

Improving the quality of teaching in America's classrooms has been a priority of mine since the day my oldest child walked through the door of her public school. While I know that my five children were, and still are, fortunate to have outstanding teachers, I am keenly aware that others are not so fortunate. Nothing can replace qualified teachers with high standards and a desire to teach. Coupled with ongoing professional development opportunities, our teachers are equipped to positively influence and inspire every child in their classroom. Teachers are the backbone of education. They are our most important assets, therefore, we must continue to give them the support and appreciation they deserve.

As Congress takes up the reauthorization of the Elementary and Secondary Education Act, ESEA, the focus will shift to the recruitment and retention of good teachers. That is why my legislation is so essential. While using no new funds, the bill would strengthen existing language by making recommendations on current mentoring programs. My proposal outlines the principal components of mentoring programs that would improve the experience of new teachers, as well as provide incentives for alternative teacher certification and licensure programs.

Mentoring is a concept that has been around for years, but only recently have educators and administrators begun to talk about its real benefits. We all know that good teachers are not created over night. It is only after years of dedication and discipline that teachers themselves admit that they truly feel comfortable in their classrooms. Unfortunately, though, we see the highest level of turn-over among beginning teachers, one-third of teachers leave the profession within 5 years. Our goal must be to work with new teachers to assure they are confident in their roles and to secure their participation in the teaching profession for years to come.

My legislation will ensure program quality and accountability by requiring that teachers mentor their peers who teach the same subject, and activities are consistent with state standards. Under the supervision and guidance of a senior colleague, teachers are more likely to develop skills and achieve a higher level of proficiency. The confidence and experience gained during this time will improve the quality of instruction, which in turn will improve overall student achievement.

Attracting and retaining quality teachers is a difficult task, especially in rural impoverished areas. As a result, teacher shortage and high turnover are commonplace in rural communities in almost every state in the nation. In addition to retention, recruitment must also be at the core of our efforts. My bill will provide incentives, and grant states the flexibility to establish, expand, or improve alternative teacher certification and licensure programs.

I do not expect this legislation to solve all the problems confronting our schools today. But, I do see it as a practical way to help make our schools stronger by providing teachers with the tools to grow as professionals.

I urge my colleagues to support the Professional Development Enhancement Act and work for its inclusion in the reauthorization of the ESEA.

By Mr. CRAPO.

S. 475. A bill to provide for rural education assistance, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAPO. Mr. President, I rise today to introduce the Rural Education Initiative Act, which makes Federal grant programs more flexible in order to help school districts in rural communities. Serving to compliment President George W. Bush's education proposal, school districts participating in this initiative are expected to meet high accountability standards.

Targeting only those school districts in rural communities with fewer than 600 students, this proposal reaches out to small, rural districts that are often disadvantaged through our current formula-driven grant system. There is tremendous need in rural states like Idaho because many of the traditional formula grants do not reach our small rural schools. And what money does reach these schools is in amounts insufficient for affecting true curriculum initiatives. In other works, schools may not receive enough funding from any individual grant to carry out meaningful activities.

My proposal addresses this problem by allowing districts to combine funds from four independent programs to accomplish locally chosen educational goals. Under this plan, districts would be able to use their aggregate funds to support local or statewide education reform efforts intended to improve the achievement of elementary and secondary school students. I am asking for an authorization of $125 million for small rural and poor rural schools, a small price that could produce large results.

Any school district participating in this initiative would have to meet high accountability standards. It would have to show significant statistical improvement in reading and math scores, based on state assessment standards. Schools that fail to show demonstrable progress will not be eligible for continued funding. In other words, this plan rewards success, while injecting accountability and flexibility.

In reauthorizing the Elementary and Secondary Education Act, ESEA, Congress has an extraordinary opportunity to change the course of education. We must embrace this opportunity by supporting creative and innovative reform proposals, like the one that I have introduced here today. I am committed to working in the best interest of our children to develop an education system that is the best in the world. The Rural Education Initiative moves us in the right direction and I hope my colleagues will join me in supporting this measure. I urge the Senate Health, Education, Labor and Pensions Committee to incorporate this provision into the upcoming ESEA bill.

By Mrs. CLINTON (for herself, Mr. KENNEDY, Mrs. MURRAY, Mr. LEAHY, Ms. MIKULSKI, Mr.

REED, Mr. SCHUMER, and Mr. CORZINE):

S. 476. A bill to amend the Elementary and Secondary Education Act of 1965 to provide for a National Teacher Corps and principal recruitment, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I come to the Floor today to raise an issue that appears to be a foreshadowing national crisis. Every year we are losing more teachers than we can hire and many of our children are left in classrooms without full-time permanent teachers to lead them in the way that they need and deserve to learn.

The teacher shortage in the United States is projected to reach a staggering 2.2 million teachers in the next ten years. And, these shortages have already begun for communities across my state as well as throughout the country. In New York, a third of upstate teachers and half of New York City teachers could retire within the next five years that's approximately 100,000 teachers across the State. In order to deal with these shortages, far too many of our schools are forced to hire emergency certified teachers or long-term substitutes to get through the year. I remember one story about a little girl in Far Rockaway, Queens who in March of last year had already had nine teachers so many she couldn't remember all of their names. Her mother was worried sick that her child was not getting the instruction she needed, but her mother felt powerless to do anything about the situation. And, at one school in Albany, the principal has to regularly fill-in for absent teachers because there are no substitutes available.

The teacher shortage in New York State is only expected to get more dire in the next few years as more teachers retire. Now, in New York City, we know that many teachers decide to leave the City for better working conditions and higher salaries in the surrounding areas.

Last week, we learned from the United Federation of Teachers in New York City that 7,000 teachers are expected to retire this year alone from the city's public schools. In Buffalo, 231 teachers retired last year, compared with an average of 92 in each of the preceding eight years. In addition, Buffalo lost 50 young teachers who moved on to other jobs or other school districts.

Not only are we losing teachers, but principals are becoming more scarce as well. Many of our schools in New York City opened their doors this year without principals. In fact, New York City is expected to lose 50 percent of their principals in the next five years. That is just an unacceptable rate of attrition. We simply cannot afford to lose people who provide instructional leadership and direction to help teachers do their best every day.

Mr. President, that's why I have chosen to focus on this issue so early in my term. And that is why I am proud to introduce the National Teacher and Principal Recruitment Act. My legislation will create a National Teacher Corps that can bring up to 75,000 talented teachers a year into the schools that need them the most. The National Teacher Corps can make the teaching profession more attractive to talented people in our society in several ways. One is by providing bonuses for mid-career professionals interested in becoming teachers. In this fast-paced world, more and more people are changing career paths several times during their working lives. A financial bonus plan can help attract people from other professions.

The National Teacher Corps will also make more scholarships available for college and graduate students, and create new career ladders for teacher aides—to become fully certified teachers. And it will ensure that new teachers get the support and professional development they need both to become—and remain—effective teachers.

This bill will also create a national teacher recruitment campaign to provide good information to prospective teachers about resources and routes to teaching through a National Teacher Recruitment Clearinghouse.

And, finally, the bill will create a National Principal Corps to help bring more highly qualified individuals into our neediest schools. Like the Teacher Corps, the Principal Corps will be focused on attracting good candidates and providing them with the mentorship and professional development they need to succeed.

I am introducing this bill to make sure that all teachers who step into classrooms and all principals who step into leadership in their schools have the expertise, the knowledge, and the support they need to meet the highest possible standards for all of our children, who deserve nothing less.

Now, if a community were running short of water, a state of emergency would be declared and the National Guard would ship in supplies overnight. If a community runs short of blood supplies, the Red Cross stages emergency blood drives to ensure that patients have what they need. Our communities are running short of good teachers and principals, and they are as important to our children's future as any other role that I can imagine. That's what makes it so important for us to act now.

Providing good teachers and principals to schools is a local issue, but it should be a national concern. And to have a partnership with our governors and our mayors, our school superintendents and others is a way that will really help us begin to address this crisis. I hope that all of us on both sides of the aisle and in the public and private sector will join together to make sure we have the supply of teachers that we need. It certainly is the most important public activity any of us can engage in, and it's important to our nation's values as well as our individual aspirations for our children. And I hope that we will find support for doing something to work with our states and localities to meet this crisis.

By Mr. ROBERTS (for himself, Mr. KENNEDY, and Mr. BINGAMAN):

S. 478. A bill to establish and expand programs relating to engineering, science, technology and mathematics education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROBERTS. Mr. President, today, even as I speak, the members of the Health, Education, Labor, and Pensions Committee are in the process of marking up the BEST bill. The BEST bill is an acronym describing an effort to try to put together the reauthorization of the Elementary and Secondary Education Act.

I think without question, in poll after poll taken in America, trying to determine what the American citizenry is concerned about, every one of the polls show the No. 1 issue of concern on the minds of American citizens today is education.

Today I am very proud to announce I am joined by my colleagues, Senator BINGAMAN and Senator KENNEDY, and there will be other cosponsors as well, but they are the original cosponsors in introducing legislation I think without question addresses a very critical need within the American educational system, and also in regard to our national security, as well; that is, the need to improve math and science education.

As a member of the Health, Education, Labor, and Pensions Committee, I want to work with Members on both sides of the aisle. That is what we are attempting to do in the markup this morning: to address the immediate need to improve and enhance the K-through-12 math and science educational level in the United States.

Simply put, the American educational system is not producing enough students with specialized skills in engineering, science, technology, and math to fill many of the jobs currently available that we need and that are vital to the United States. Other countries are simply outpacing us in the number of students in education in EMST, engineering, math, science, and technology study. As a result of this shortage of skilled workers, Congress had to increase the number of H–1B visas by almost 300,000 from fiscal year 2000 to fiscal year 2002.

Now, the United States will need to produce four times as many scientists and engineers than we currently produce in order to meet our future demand. The technology community alone will add 20 million jobs in the next decade that require technical expertise. The U.S. has been a leader in technology for decades and the new economy has created and will continue to create an ample number of jobs that require this kind of skilled workforce.

While increasing the number of visas will assist our American economies with their current labor shortage in specialty and technical areas, we need to focus on long-term solutions through the education of our children.

Improving our students' knowledge of math and science and technology is not only a concern of American companies to remain competitive but should also be a concern of our U.S. national security. The distinguished acting Presiding Officer, the Senator from Oklahoma, has the privilege, along with me, to serve on the Senate Armed Services Committee. He is the chairman of the Readiness Subcommittee. I am in charge of a subcommittee called Emerging Threats and Capabilities.

Guess what is now a real threat, not an emerging threat. According to the latest reports on national security, the lack of engineering, science, technology, and math education, beginning at the K-through-12 level, imposes a great security threat. We don't have the people to do the job to protect our country in regard to cyber threats and the many other threats that certainly threaten our national security.

The report issued by the U.S. Commission on National Security for the 21st century reports:

The base of American national security is the strength of the American economy.

And our education system.

Therefore, the health of the U.S. economy depends not only on citizens that can produce and direct innovation, but also on a populace that can effectively assimilate the new tools and the technologies. This is critical not just for the U.S. economy in general but specifically for the defense industry, which simultaneously develops and defends against the same technologies.

This is not only true in regard to that commission report, what we call the Hart-Rudman report, but it is true in regard to the reports by the Bremer commission, by the Gilmore commission, and the CSIS study. Commission report after commission report says we are lacking in regard to this kind of expertise and this kind of skill.

The EMST bill builds on several goals outlined in the National Commission on Mathematics and Science and Teaching of the 21st century. That is the rather famous and well-read report now called the Glenn report. These goals include:

First, establishing an ongoing system to improve science and math education in K–12. The legislation we have introduced would accomplish this through afterschool and day-care opportunities for more hands-on learning and programming that is focused on math and science. It also strives to make all middle school graduates technology literate through a technology training program.

Second, it does increase the number of math and science teachers and improve their preparation. EMST accomplishes this by several means, including intensive summer development institutes, grants for teacher technology training software and instructional materials, master teacher programs that aid other teachers and bring expertise in math, science, or technology. And finally, expansion of the Eisenhower National Clearinghouse to allow access via the Internet to real programs that effectively teach science and math.

Third, the bill makes teaching science and math more attractive for teachers. The EMST bill provides mentoring for teachers to encourage them to stay in their profession, in addition to educating our high school students about the course of study to enter the science, math, and the teaching field.

Mr. President, I encourage all my colleagues to support increasing our K-through-12 teachers' ability to teach math, science, and technology to our students and encourage these students to enter into EMST fields by supporting this legislation.

I don't think it is an exaggeration to say our future depends on it.

By Mr. DEWINE (for himself, Mr. HUTCHINSON, Mr. HATCH, Mr. VOINOVICH, Mr. BROWNBACK, Mr. ENSIGN, Mr. ENZI, Mr. HAGEL, Mr. HELMS, Mr. INHOFE, Mr. NICKLES, and Mr. SANTORUM):

S. 480. A bill to amend titles 10 and 18. United States Code, to protect unborn victims of violence; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today to speak, once again, on behalf of unborn children who are the silent victims of violent crimes. Today, along with my distinguished colleagues, Senators HUTCHINSON, HATCH, VOINOVICH, BROWNBACK, ENSIGN, ENZI, HAGEL, HELMS, INHOFE, NICKLES, and SANTORUM, I am introducing a bill called the ''Unborn Victims of Violence Act of 2001,'' which would create a separate offense for criminals who injure or kill an unborn child.

Our bill, which is similar to legislation we sponsored in the 106th Congress, would establish new criminal penalties for anyone injuring or killing a fetus while committing certain federal offenses. Therefore, this bill would make any murder or injury of an unborn child during the commission of certain existing federal crimes a separate crime under federal law and the Uniform Code of Military Justice. Twenty-four states already have criminalized the killing or injuring of unborn victims during a crime. The Unborn Victims of Violence Act simply acknowledges that violent acts against unborn babies are also criminal when the assailant is committing a federal crime.

We live in a violent world. And sadly, sometimes, perhaps more often than we realize, even unborn babies are the targets, intended or otherwise, of violent acts. I'll give you some disturbing examples.

In 1996, Airman Gregory Robbins and his family were stationed in my home state of Ohio at Wright-Patterson Air Force Base in Dayton. At that time, Mrs. Robbins was more than eight months pregnant with a daughter they named Jasmine. On September 12, 1996, in a fit of rage, Airman Robbins wrapped his fist in a T-shirt and savagely beat his wife by striking her repeatedly about the head and abdomen. Fortunately, Mrs. Robbins survived the violent assault. Tragically, however, her uterus ruptured during the attack, expelling the baby into her abdominal cavity, causing Jasmine's death.

Air Force prosecutors sought to prosecute Airman Robbins for Jasmine's death, but neither the Uniform Code of Military Justice nor the federal code makes criminal such an act which results in the death or injury of an unborn child. The only available federal offense was for the assault on the mother. This was a case in which the only available federal penalty did not fit the crime. So prosecutors bootstrapped the Ohio fetal homicide law to convict Airman Robbins of Jasmine's death. Fortunately, upon appeal, the court upheld the lower court's ruling.

If it hadn't been for the Ohio law that was already in place, there would have been no opportunity to prosecute and punish Airman Robbins for the assault against Baby Jasmine. That's why we need a Federal remedy to avoid having to bootstrap state laws to provide recourse when a violent act occurs during the commission of a federal crime. A federal remedy will ensure that crimes within federal jurisdiction against unborn victims are punished.

Let me give you another example. In August 1999, Shiwona Pace of Little Rock, Arkansas, was days away from giving birth. She was thrilled about her pregnancy. Her boyfriend, Eric Bullock, however, did not share her joy and enthusiasm. In fact, Eric wanted the baby to die. So, he hired three thugs to beat his girlfriend so badly that she lost the unborn baby. According to Shiwona, who testified at a Senate Judiciary hearing we held in Washington on February 23, 2000: ''I begged and pleaded for the life of my unborn child, but they showed me no mercy. In fact, one of them told me, 'Your baby is dying tonight.' I was choked, hit in the face with a gun, slapped, punched and kicked repeatedly in the stomach. One of them even put a gun in my mouth and threatened to shoot.''

In this particular case, just a few short weeks before this vicious attack, Arkansas passed its ''Fetal Protection Act.'' Under the state law, Erik Bullock was convicted on February 9, 2001, of capital murder against Shiwona's unborn child and sentenced to life in prison without parole. He was also convicted of first degree battery for harm against Shiwona.

In yet another example, this one in Columbus, 16-year-old Sean Steele was found guilty of two counts of murder for the death of his girlfriend Barbara ''Bobbie'' Watkins, age 15, and her 22-week-old unborn child. He was convicted under Ohio's unborn victims

law, which represented the first murder conviction in Franklin County, Ohio, in which a victim was a fetus.

Look at one more example. In the Oklahoma City and World Trade Center bombings, Federal prosecutors were able to charge the defendants with the murders of or injuries to the mothers, but not to their unborn babies. Again, federal law currently fails to criminalize these violent acts. There are no federal provisions for the unborn victims of federal crimes.

Our bill would make acts like this, acts of violence within federal jurisdiction, Federal crimes. This is a very simple step, but one that will have a dramatic effect.

The fact is that it's just plain wrong that our federal government does absolutely nothing to criminalize violent acts against unborn children. We cannot allow criminals to get away with murder. We must close this loophole.

As a civilized society, we must take a stand against violent crimes against children, especially those waiting to be born. We must close this loophole.

We purposely drafted this legislation very narrowly. Because of that, our bill would not permit the prosecution for any abortion to which a woman consented. It would not permit the prosecution of a woman for any action, legal or illegal, in regard to her unborn child. Our legislation would not permit the prosecution for harm caused to the mother or unborn child in the course of medical treatment. And finally, our bill would not allow for the imposition of the death penalty under this Act.

It is time that we wrap the arms of justice around unborn children and protect them against criminal assailants. Everyone agrees that violent assailants of unborn babies are criminals. When acts of violence against unborn victims fall within federal jurisdiction, we must have a penalty. We have an obligation to our unborn children who cannot speak for themselves. I think Shiwona Pace said it best when she testified at our hearing, ''The loss of any potential life should never be in vain.''

I strongly urge my colleagues to join in support of this legislation.

By Mr. GRAHAM (for himself and Mr. CORZINE):

S. 481. A bill to amend the Internal Revenue Code of 1986 to provide for a 10-percent income tax rate bracket, and for other purposes; to the Committee on Finance.

Mr. GRAHAM. Mr. President, with my colleague, I rise today to introduce the Economic Insurance Tax Cut of 2001.

In his 1862 message to Congress, President Abraham Lincoln surveyed our fractured national horizon and concluded that:

> The occasion is piled high with difficulty and we must rise to the occasion. As our case is new, so we must think anew and act anew.

The same could be said about our current circumstances. The United States has not experienced a recession since the one that occurred in 1990–1991. At that time, the old economic assumptions were shattered and new ones born. Over the past 5 years, it seemed as if nothing could stop the American economy from roaring on.

It was during this comparatively serene time that then-candidate George W. Bush, in the debates leading up to the Iowa caucus in the winter of 1999–2000, announced his plan to cut taxes by $1.6 trillion over the next 10 years.

The landscape has shifted dramatically since the winter of 1999 to the spring of 2001. That shift in the landscape did not just occur in Seattle. Today's headlines are filled with ominous news. Economic activity in the manufacturing sector declined in February for the seventh consecutive month. DaimlerChrysler has laid off 26,000 workers. Whirlpool has slashed the estimates of its earnings and plans 6,000 job cuts. Gateway is dismissing 3,000 workers, 12.5 percent of its workforce. Over the past 2 months, layoffs totaling more than 275,000 jobs have been announced.

This bad news has had, as would be expected, a negative effect on consumers' confidence. Consumers' confidence has plunged 35 points from an all-time high of 142.5 in September of 1999.

When their confidence is shaken, consumers stop spending. When consumers stop spending, the economy gets worse. When the economy gets worse, consumer confidence falls further. The cycle feeds on itself.

In an attempt to staunch the bleeding, the Federal Reserve has twice lowered interest rates in January. Monetary policy, the adjustment of short-term interest rates, is a trusted and often effective tool in stimulating the economy. I am confident that the Federal Reserve will continue to exercise wise judgment.

But there is a growing consensus that more must be done, that fiscal policy can also play an important role in boosting the economy, if not immediately then certainly in the second half of this year. In his testimony before the Senate Budget Committee in January, Chairman Alan Greenspan of the Federal Reserve Board stated:

> Should the current economic weakness spread beyond what now appears likely, having a tax cut in place may in fact do noticeable good.

On February 13, Treasury Secretary O'Neill told the House Ways and Means Committee that he, too, supports the use of fiscal policy as a tool to boost the economy. Mr. O'Neill said:

> To the extent that getting it [the surplus] back to them [the American people] sooner can help stave off a worsening of the economic slowdown, we should move forward immediately.

Finally, during the President's speech to the Nation a week ago, he stated:

> Tax relief is right and tax relief is urgent. The long economic expansion that began almost 10 years ago is faltering. Lower interest rates will eventually help, but we cannot assure that they will do the job all by themselves.

Senator CORZINE and I agree. We think there are several perspectives from which this issue must be viewed. The first is the contextual perspective: How large a tax cut can the American economy and the Federal fiscal system sustain? We share the belief that we are facing a serious demographic challenge in the next 10 to 15 years, as large numbers of persons born immediately after World War II will retire and place unique strains on our Nation's Social Security and Medicare system. That is but one example of the kinds of steps that we need to be cognizant to take and prepare for which will utilize a portion of our current surplus.

After we have determined how large a tax cut is prudent in the context of these other responsibilities, the next step is crafting a plan that can, in fact, be helpful in averting a prolonged economic slowdown. According to economists, a tax cut aimed at stimulating the economy should have four characteristics.

First, the tax relief should be simple enough to be enacted quickly. One of the principal criticisms of the attempts to use fiscal policy to stimulate the economy on a short-term basis is that, historically, Congress and the President have been sufficiently slow in reaching agreement for enactment of such tax cuts that by the time the tax relief is available, the problem has passed. The longer Congress deliberates, the less likely tax relief will get to the American public in time to do some good. Therefore, a simple, straightforward approach is absolutely essential to getting a bill passed quickly.

The more components this tax relief includes, the more debate, discussion, deliberation, and the likelihood of procrastination.

The second characteristic is the tax relief must be significant enough to have a measurable effect on the economy. The economists we have consulted suggest that tax relief in the amount of $60 billion to $65 billion would boost the gross domestic product by one-half to three-quarters of a percentage point. At a time when the economy is at virtually zero growth, that would be a welcome improvement.

Third, the tax relief must be conspicuous. The more transparent the tax cut, the more positive effect it will have on consumer confidence.

Finally, the tax relief must be directed at those who will spend it. Two-thirds of the Nation's economic output is based on consumer spending. Recessions are largely a result of a letup in that consumer demand. Common sense suggests that broad-based tax cuts, the bulk of which are directed at low- and middle-income American families, are much more likely to be the tax cuts that will stimulate consumption. Any

tax cut that claims to provide an economic stimulus must be measured against these four standards.

When scrutinized this way, both the President's proposal and the plan which was reported last week by the House Ways and Means Committee, and may, in fact, be voted on by the full House as early as tomorrow, display significant weaknesses.

One, context: At $1.6 trillion, the Bush plan would consume nearly 75 percent of the non-Social Security, non-Medicare surplus, when interest costs are included. That leaves precious few resources for other important initiatives like desperately needed prescription drugs for our seniors, modernization of our armed forces, improving our schools.

No funds would be left to add to the debt reduction that can come through the application of the surpluses coming into Social Security and Medicaid. The Ways and Means proposal is a more expensive down-payment of the Bush plan in that its implementation is pushed forward by a year.

Two, simplicity: The President's tax cut plan contains several complicated proposals that will require Congress to carefully consider their ramifications. This deliberation is likely to delay enactment of the President's plan until it is too late to stimulate the economy.

Three, sufficiency: The president's budget tallies the total tax relief for 2001 at $183 million. For 2002, the total is $30 billion. Tax relief at that low level will do little to boost the economy. The President's tax relief is so small because it is phased in over a five-year period. Phasing in tax relief is exactly the opposite policy to adopt if your goal is economic stimulus. Even the Ways and Means package, despite applying retroactively to 2001, falls far short of injecting tax cuts into the economy during the second half of this year. That plan provides only $10 billion of ''stimulus'' during this period.

Four, propensity to Spend: Economic stimulus occurs when consumers are encouraged to spend. Only one of the proposals in the President's plan meets this standard. Eighty percent of all taxpayers are affected by changes to the 15 percent tax bracket. Therefore, the President's idea for creating a new 10 percent bracket—which has the effect of lowering the 15 percent tax rate—will apply quite broadly across those paying income taxes. In contrast, three-quarters of all taxpayers are unaffected by changes to the remaining four tax brackets. Yet, nearly 60 percent of the total cost of both the President's and the Ways and Means' tax cut packages are devoted to these upper rate cuts.

Earlier this year, noted economist Robert Samuelson wrote in the Washington Post that the time had come for tax cuts whose purpose was to stimulate the economy. He too, criticized the President's tax plan as being poorly designed for this purpose. Specifically, he argued that the President should make his tax cuts retroactive to the beginning of this year and focus more toward the bottom income brackets.

Samuelson also argued that other proposals, whatever their merit—marriage penalty relief, estate tax repeal, new incentives for charitable giving—should wait their place in line; that the first place in this line of America in the year 2001 should be economic stimulation to keep this economy from falling into a deep ditch.

Mr. President, I ask unanimous consent that the columns by Robert Samuelson be printed in the RECORD immediately after my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. GRAHAM. Mr. President, Senator CORZINE and I have an alternative that makes the improvements to the President's tax cut plan suggested by Mr. Samuelson, and makes it consistent with the characterization which I have outlined. Senator CORZINE and I have an alternative that builds upon a proposal included in the President's tax cut plan.

President Bush has proposed the creation of a new 10-percent rate bracket. His proposal is that for incomes up to $6,000 for an individual and $12,000 for a couple, that the first $6,000 or $12,000 would be taxed at 10 percent rather than the current 15 percent. The problem with his proposal is that he proposes to implement this change over 5 years. It is not until the year 2006 that this plan is fully in place.

Senator CORZINE and I propose to fully implement this 10-percent bracket retroactive to January of this year. In addition, we suggest the bracket needs to be expanded so the incomes on which it would apply would be $9,500 for an individual, and $19,000 for a married couple.

There are several reasons why we believe their proposal makes sense.

First, it provides tax relief to a broad range of taxpayers. Every American income tax payer would participate in this plan. All couples with income tax liabilities would save $950 annually, or have their tax liability eliminated entirely.

Second, our proposal provides significant tax relief to middle-income families who are more likely to spend their additional money, and, therefore, create demand within our economy.

Our plan would be more effective in stimulating our economy, particularly at this time of concern about our economic future.

This proposal will lower taxes by $60 billion in both 2001 and 2002.

I point out this contrast with the President's plan with the lower taxes in 2001 by less than $200 million, and the plan of the House Ways and Means Committee which will lower taxes in 2001 by approximately $10 billion.

We believe this infusion of energy into the economy—$60 billion in this and the next year—is the first portion of tax relief which will be strong enough to be able to have a meaningful effect on the economy.

We would propose that a large portion of the first year's tax relief be reflected in workers' paychecks during the second half of the year, precisely the time that would be needed to forestall a prolonged economic downturn.

The 10-year cost of this proposal is $693 billion. This is less than half of the President's total plan, and it could be reduced further if the Congress were to decide it wished to sunset any portion of this tax cut before the end of the 10-year period.

Fourth, this proposal is simple. There is no reason this proposal could not be enacted by July 4. The Treasury would be directed to adjust its withholding tables as quickly as possible. Families could expect to see an increase in their paychecks by a reduction in the amount withheld for income tax in time for their August vacations. Instead of staying home that week, they could take their children to the beach or take themselves out to dinner. They could use the money to fix the car and head for the mountains, or fix up the backyard and celebrate with a barbecue.

In doing so, they could begin to reverse the cycle—to put money back into the economy, to feed expansion, to stimulate growth, to create jobs, to increase Americans' confidence in their economic future.

This tax cut would truly be the gift that keeps on giving.

There is one additional benefit to proceeding in the manner that Senator CORZINE and I are suggesting. Enacting this stimulative tax cut first and waiting until later to address other tax matters will give Congress time to evaluate the seriousness of the economic downturn and to evaluate how effective this economic insurance policy has been in putting a foundation under that downturn.

In particular, this time will give us a better idea of whether the slowing economy will adversely affect the surplus projections on which additional tax cuts are predicated.

Again, I return to President Lincoln's suggestion during one of the most trying times of his service as President of the United States.

This is not the time for timidity and handwringing. This is the time for swift, bold action. The occasion is piled high with difficulty, and we must rise with the occasion.

EXHIBIT 1

[From the Washington Post, Jan. 9, 2001]

TIME FOR A TAX CUT

(By Robert J. Samuelson)

For some time, I have loudly and monotonously objected to large federal tax cuts. The arguments against them seemed overwhelming: The booming economy didn't need further stimulating; the best use of rising budget surpluses was to pay down the federal debt. But I regularly attached a large asterisk to this opposition. A looming economic slowdown or recession might justify a big tax cut. Well, the asterisk is hereby activated.

By now, it's clear that most commentators missed the economy's emerging weakness.

Indeed, a recession may already have started. Industrial production has declined slightly since September. Christmas retail sales were miserable; at Wal-Mart, same-store sales were up a meager 0.3 percent from a year earlier. The story is the same for autos; sales declined 8 percent in December. Montgomery Ward is going out of business. Last week's surprise interest-rate cut by the Federal Reserve confirms the large miscalculation.

A tax cut is now common sense. It would make it easier for consumers to handle their heavy debts and, to some extent, bolster their purchasing power. The fact that President-elect George W. Bush supports a major tax cut is fortuitous. But his proposal is poorly designed to combat recession. Although the estimated costs—$1.3 trillion from 2001 to 2010—are large, they are ''backloaded.'' That is, the biggest tax cuts occur in the later years. In 2002, the tax cut would amount to $21 billion, a trivial 0.2 percent of gross domestic product (national income). This would barely affect the economy.

What Bush needs to do is accelerate the immediate benefits (to resist a slump) while limiting the long-term costs (to protect against new deficits). This would improve a tax plan's economic impact and political appeal. The required surgery is easier than it sounds:

Bush's across-the-board tax-rate cuts should be compressed into two years—making them retroactive to Jan. 1, 2001—instead of being phased in from 2002 to 2006. The idea is to increase people's disposable incomes, quickly. (Under the campaign proposal, today's rates of 39.6, 36, 31 and 28 percent would be reduced to 33 and 25 percent. The present 15 percent rate would remain, but a new 10 percent rate would be created on the first $6,000 of taxable income for singles and $12,000 for couples.) Similarly, the proposed increase in the child tax-credit, from $500 to $1,000, should occur over two years, not four.

The distribution of the tax cut should be tilted more toward the bottom and less toward the top. One criticism of the original plan is that it's skewed toward the richest taxpayers, who pay most of the taxes. (In 1998 the 1.6 percent of tax returns with incomes above $200,000 paid 40 percent of the income tax.) The criticism could—and should—be blunted by reducing the top rate to only 35 percent, while expanding tax cuts for the lower brackets. This would concentrate tax relief among middle-class families, whose debt burdens are highest.

Bush should defer most other proposals: the gradual phase-out of the estate tax, new tax breaks for charitable contributions and tax relief from the so-called marriage penalty. Together, these items would cost an estimated $400 billion from 2001 to 2010. They are the most politically charged parts of the package and the least related to stimulating the economy. Proposing them now would muddle what ought to be Bush's central message: a middle-class tax cut to help the economy.

The case for this tax cut rests on a critical assumption. It is that the slowdown (or recession) could be long, deep or both. If it's just a blip—as some economists think—the economic argument for a tax cut disappears. The economy will revive quickly, aided by the Fed's lower interest rates. Then the debate over a tax cut should return to political preferences. Do we want more spending, lower taxes or debt reduction? My preference would remain debt reduction. But I doubt that the economic outlook is so charmed.

Just as the boom—the longest in U.S. history—was unprecedented, so may be its aftermath. The boom's great propellant was a buying binge by consumers and businesses. Both spent beyond their means. They went deep into debt. Put another way, the private sector as a whole has been running an ever-widening ''deficit,'' says Wynne Godley of the Jerome Levy Economics Institute of Bard College. By his calculation, the deficit began in 1997 and reached a record 8 percent of disposable income in late 2000. Household debt hit 100 percent of personal disposable income, up from 82 percent in 1990.

What may loom is a protracted readjustment. ''An increase in private debt relative to income can go on for a long time, but it cannot go on forever,'' writes Godley. People and companies reduce their debt burdens by borrowing less and using some of their income to repay existing loans. The private-sector ''deficit'' would shrink. But this process of retrenchment would hurt consumer spending and business investment, which constitute about 85 percent of the economy.

It's self-defeating for government to exert a further drag through growing budget surpluses. Of course, government could spend more. But politically, that isn't likely—and spending increases take time to filter into the economy. A tax cut could be enacted quickly and enables people to keep more of what they've earned. Roughly speaking, the Bush tax cuts could raise disposable incomes of middle-income households (those between $35,000 and $75,000) by $1,000 to $2,500. This would make it easier for consumers to manage their debts and maintain spending. It's also an illusion to think that lower interest rates (through Fed cuts and government-debt repayment) can instantly and single-handedly stimulate recovery.

''The danger of a severe and prolonged recession is being seriously underestimated,'' writes Godley. If you believe that—and I do—then a tax cut that made no sense six months ago makes eminent sense now.

[From the Washington Post, Feb. 14, 2001]

WHO DESERVES A TAX CUT?

(By Robert J. Samuelson)

The economic case for a tax cut seems compelling. The U.S. economy is unwinding from an unstable boom. ''Animal spirits''—the immortal phrase of economist John Maynard Keynes—took hold. Consumers overborrowed or, dazzled by rising stock prices, overspent. Businesses overinvested thanks to strong profits and cheap capital. Both consumers and businesses will now curb spending: consumers made cautious by high debts, stagnant (or falling) stocks and fewer new jobs; businesses deterred by surplus capacity and scarcer capital. A tax cut would cushion the spending slowdown.

Of course, we don't yet know the slump's seriousness. In the final quarter of 2000, business investment dropped at an annual rate of 1.5 percent; in the first quarter of 2000, it rose at a rate of 21 percent. Consumer spending rose at a 2.9 percent rate in the last quarter, but within that, spending on ''durables'' (cars, appliances, computers) dropped 3.4 percent, again at annual rates. These were both large declines from earlier in the year. In the first quarter, the gains had been 7.6 percent and 23.6 percent.

Consumer spending (68 percent of gross domestic product) and business investment (14 percent) constitute four-fifths of the economy. If they are in retreat, the economy is—almost by definition—in trouble. (Housing, exports and government represent the rest.) The case against a tax cut is that the spending slowdown will be mild; it will be checked by the Federal Reserve's cut in interest rates. Perhaps. But I'm skeptical. If businesses have idle capacity and consumers have excess debts, lower interest rates may not stimulate much new borrowing.

Nor will large budget surpluses automatically preserve prosperity. This argument is (to put it charitably) absurd. The surpluses are the consequence—not the cause—of the economic boom and stock market frenzy, which created a tidal wave of new tax revenues. The big surpluses were a pleasant dividend. But now they may depress the economy by removing purchasing power.

This is easy to grasp. Suppose the budget surplus were a huge sum: say, $1 trillion or about 10 percent of GDP. Would anyone deny the drag on economic growth? Personal and corporate income would be reduced by the amount of the surplus. This drag could be offset only if the resulting drop in interest rates and repayment of federal debt created an equal stimulus. Though conceivable, this is hardly certain and—in my view—unlikely. Today's surplus is only $200 billion to $300 billion, or about 2 to 3 percent of GDP. But the same reasoning applies. The surplus doesn't mechanically create demand or spending and, quite probably, does the opposite.

A year ago, a tax cut would have been folly. Private spending was booming. But a tax cut now is not an effort to ''fine tune'' the economy. It's the logical response to the end of the private boom—an attempt to prevent a ''bust'' by restoring some of people's incomes. Whose incomes? Who deserves tax cuts? These (to me) are the harder questions.

President Bush's across-the-board rate cuts would give the largest dollar tax cuts to the wealthiest Americans, because they pay most taxes. In 2000, the richest 10 percent of Americans—whose incomes begin at about $100,000—paid 66 percent of the federal income tax and 50 percent of all federal personal taxes (including payroll and excise taxes), estimates the Congressional Joint Committee on Taxation.

Within this group, the wealthiest one percent—with incomes above $300,000—paid 34 percent of income taxes and 19 percent of all taxes. Over time, these shares have increased. In 1977 the richest 10 percent paid 50 percent of income taxes and 43 percent of all federal taxes. There are two reasons for this trend: (a) the rich's incomes grew faster than everyone else's; and (b) tax relief went more toward the lower half of the income spectrum.

If you like income redistribution for its own sake, this is wonderful. But the growing gap between those who pay for government and those who receive its benefits creates a dangerous temptation. It is to tax the few and distribute to the many. Though politically expedient, expanded government programs may have little to do with the broader national interest. They may simply make more people and institutions dependent on Washington and the political process. Taxes must be fairly broad-based if the public is to weigh the pleasure of new government programs against the pain of higher taxes.

As originally proposed, Bush's plan was avowedly political. It aimed to restrain government spending by depriving government of some money to spend. But Bush is now selling his program as an antidote to economic slump. Ironically, this strengthens the case for skewing the tax cut toward middle- and lower-income households. Almost certainly, their debt burdens are higher than upscale America's. they may also spend more of any tax cut than the rich, providing greater support to the economy.

Finally, it's true that an excessive tax cut would invite future deficits. How to balance these competing pressures is what we will debate. My preference is to accelerate the introduction of Bush's across-the-board rate cuts, with one exception; I would cut the top rate of 39.6 percent to 35 percent, instead of Bush's 33 percent, and use the savings to broaden tax cuts at lower income levels.

I would also accelerate the increase in the child tax credit—from $500 to $1,000—but

defer Bush's other proposals (ending the estate tax, bigger charitable deductions). This would raise the overall tax cut's immediate economic impact and reduce the long-term budget costs.

As we debate, we should not idealize budget surpluses. They are simply paper projections, based on various assumptions, including strong economic growth. If the growth doesn't materialize, neither will the surpluses. A slavish effort to preserve the surpluses could perversely destroy them.

[From the Washington Post, Mar. 7, 2001]

TAX CUTS: THE TRUE ISSUE

(By Robert J. Samuelson)

The tax and budget debate is essentially a quarrel about political philosophy. President Bush wants to limit the size of government by depriving it of more money to spend. His Democratic critics want government to keep as much in taxes as possible, because they want to spend it. In fiscal 2000 federal taxes represented a post-World War II record of 20.6 percent of gross domestic product (national income). Over a decade, Bush wants to nudge that below 19 percent of GDP, while Democrats prefer to keep it above 20 percent. That's the central issue between them—and they're trying to obscure it.

We have diehard liberals preaching the virtues of reducing the federal debt, not because they believe in smaller government but because this makes them seem frugal, cautious and even conservative. Meanwhile, President Bush flaunts his proposed spending increases for education and Medicare, not because he believes in bigger government but because they make him seem humane, sensitive and even liberal. Both sides are fleeing their traditional stereotypes: liberals as extravagant spenders, conservatives as cruel cheapskates.

The result is calculated confusion. The antagonists informally deemphasize their central dispute—the size of government—and shift the debate to side issues (they hope) will disarm their opponents. For example:

Does a faltering economy need a tax cut?

This is Bush's ace. Consumer confidence has dropped for five straight months; in January existing-home sales fell 6.6 percent. The more the economy weakens, the harder it is for Democrats to resist tax cuts. There's a certain common-sense appeal to bolstering people's purchasing power by reducing their taxes. A year ago President Clinton proposed only $350 billion in tax cuts over a decade. Now many Democrats talk in the $700 billion to $1 trillion range—much closer to Bush's $1.6 trillion.

Do Bush's budget numbers add up?

No, say critics. His budget skimps on paying down the federal debt—all the Treasury bonds and bills issued to cover past budget deficits. Worse, the tax cut might create future deficits when combined with programs not in the present budget: an anti-missile defense and private accounts for Social Security, for instance. All this is possible, especially if the surplus forecasts turn out (as they might) to be too optimistic. Still, the critics' case is wildly overstated.

Between 2002 and 2011, Bush projects budget surpluses of $5.6 trillion. This is defensible; the Congressional Budget Office made a similar estimate. The tax cut would reduce the surplus by $1.6 trillion and require an extra $400 billion in interest payments. This leaves a surplus of $3.6 trillion. Of that, Bush would use $2 trillion for debt reduction. (From 2001 to 2011, the debt would drop from $3.2 trillion to $1.2 trillion. Interest payments would decline to below 3 percent of federal spending, down from 15 percent in 1997.)

Now we're at $1.6 trillion. Bush proposes almost $200 billion in new spending—mainly for changes in Medicare, including a drug benefit. Bush labels the remaining $1.4 trillion in surplus a ''reserve'' against faulty estimates, further debt reduction or more spending. All the possible claims on the reserve (the missile defense, private accounts for Social Security) could exhaust it. But if you're trying to make Congress set spending priorities—as Bush is—his approach isn't unreasonable.

If there's a tax cut, who should get it?

Politically, this is Bush's Achilles' heel. He says that taxes belong to the people who earned them—not the government. Okay. The political problem is that most federal taxes are paid by a small constituency of the well-to-do and wealthy. In 2001 the richest 10 percent of Americans—those with incomes above $107,000—will pay 68 percent of the income tax and 52 percent of all federal taxes, estimates the Congressional Joint Committee on Taxation. With its across-the-board rate reductions, Bush's plan give them the largest dollar cuts. Citizens for Tax Justice, a liberal advocacy group, estimates that the richest one percent get 31 percent of the income-tax cuts (slightly below their share of income taxes, 36 percent). Democrats are aghast; they want smaller tax cuts to concentrate benefits on households under $100,000.

To handicap the tax debate, watch these issues. If the economy weakens further, pressure for tax relief will intensify. But so will pressure to redirect the benefits down the income ladder. My view—stated in earlier columns—is that the economy needs a tax cut. I would accelerate Bush's across-the-board rate cuts and the doubling of the child credit (from $500 to $1,000). But I would cut today's top rate of 39.6 percent only to 35 percent, not 33 percent, as Bush proposes. All this would maximize the tax cut's immediate effect on the economy.

Like Bush's critics, I think the long-term budget projections are too uncertain to enact his full tax package now; so I would defer action on his other proposals (abolishing the estate tax, marriage-penalty relief, new charitable deductions). But unlike his critics, I think Bush is correct on the central issue of government's size. The real choice now is not between cutting taxes and paying down the debt. If immense surpluses emerge, Congress—Democrats and Republicans—will spend them. Even last year's modest surplus spurred Congress to a spending spree.

It's the wrong time for huge spending increases. The retirement of the baby boom generation, beginning in a decade, will expand government commitments. Retirement benefits will inevitably increase, exerting pressure for higher taxes. If we raise spending now, we will begin this process from a higher base of spending and taxes—that will ultimately have to be paid by today's children and young adults. This would be a dubious legacy.

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD the text of the bill.

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

S. 481

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Economic Insurance Tax Cut of 2001''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) SECTION 15 NOT TO APPLY.—No amendment made by this Act shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

SEC. 2. 10-PERCENT INCOME TAX RATE BRACKET FOR INDIVIDUALS.

(a) RATES FOR 2001.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (d) and inserting the following:

''(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

''(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

''(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $19,000	10% of taxable income.
Over $19,000 but not over $45,200.	$1,900, plus 15% of the excess over $19,000.
Over $45,200 but not over $109,250.	$5,830, plus 28% of the excess over $45,200.
Over $109,250 but not over $166,500.	$23,764, plus 31% of the excess over $109,250.
Over $166,500 but not over $297,350.	$41,511.50, plus 36% of the excess over $166,500.
Over $297,350	$88,617.50, plus 39.6% of the excess over $297,350.

''(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $14,250	10% of taxable income.
Over $14,250 but not over $36,250.	$1,425, plus 15% of the excess over $14,250.
Over $36,250 but not over $93,650.	$4,725, plus 28% of the excess over $36,250.
Over $93,650 but not over $151,650.	$20,797, plus 31% of the excess over $93,650.
Over $151,650 but not over $297,350.	$38,777, plus 36% of the excess over $151,650.
Over $297,350	$91,229, plus 39.6% of the excess over $297,350.

''(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $9,500	10% of taxable income.
Over $9,500 but not over $27,050.	$950, plus 15% of the excess over $9,500.
Over $27,050 but not over $65,550.	$3,582.50, plus 28% of the excess over $27,050.
Over $65,550 but not over $136,750.	$14,362.50, plus 31% of the excess over $65,550.
Over $136,750 but not over $297,350.	$36,434.50, plus 36% of the excess over $136,750.
Over $297,350	$94,250.50, plus 39.6% of the excess over $297,350.

''(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $9,500	10% of taxable income.
Over $9,500 but not over $22,600.	$950, plus 15% of the excess over $9,500.
Over $22,600 but not over $54,625.	$2,915, plus 28% of the excess over $22,600.
Over $54,625 but not over $83,250.	$11,882, plus 31% of the excess over $54,625.
Over $83,250 but not over $148,675.	$20,755.75, plus 36% of the excess over $83,250.

''If taxable income is:	The tax is:
Over $148,675..... ...	$44,308.75, plus 39.6% of the excess over $148,675.''.

(b) INFLATION ADJUSTMENT TO APPLY IN DETERMINING RATES FOR 2002.—Subsection (f) of section 1 is amended—

(1) by striking ''1993'' in paragraph (1) and inserting ''2001'',

(2) by striking ''1992'' in paragraph (3)(B) and inserting ''2000'', and

(3) by striking paragraph (7).

(c) CONFORMING AMENDMENTS.—

(1) The following provisions are each amended by striking ''1992'' and inserting ''2000'' each place it appears:

(A) Section 25A(h).
(B) Section 32(j)(1)(B).
(C) Section 41(e)(5)(C).
(D) Section 42(h)(3)(H)(i)(II).
(E) Section 59(j)(2)(B).
(F) Section 63(c)(4)(B).
(G) Section 68(b)(2)(B).
(H) Section 132(f)(6)(A)(ii).
(I) Section 135(b)(2)(B)(ii).
(J) Section 146(d)(2)(B).
(K) Section 151(d)(4).
(L) Section 220(g)(2).
(M) Section 221(g)(1)(B).
(N) Section 512(d)(2)(B).
(O) Section 513(h)(2)(C)(ii).
(P) Section 685(c)(3)(B).
(Q) Section 877(a)(2).
(R) Section 911(b)(2)(D)(ii)(II).
(S) Section 2032A(a)(3)(B).
(T) Section 2503(b)(2)(B).
(U) Section 2631(c)(2).
(V) Section 4001(e)(1)(B).
(W) Section 4261(e)(4)(A)(ii).
(X) Section 6039F(d).
(Y) Section 6323(i)(4)(B).
(Z) Section 6334(g)(1)(B).
(AA) Section 6601(j)(3)(B).
(BB) Section 7430(c)(1).

(2) Subclause (II) of section 42(h)(6)(G)(i) is amended by striking ''1987'' and inserting ''2000''.

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 1(g)(7)(B)(ii)(II) is amended by striking ''15 percent'' and inserting ''10 percent''.

(2) Section 1(h) is amended by striking paragraph (13).

(3) Section 3402(p)(1)(B) is amended by striking ''7, 15, 28, or 31 percent'' and inserting ''5, 10, 15, 28, or 31 percent''.

(4) Section 3402(p)(2) is amended by striking ''15 percent'' and inserting ''10 percent''.

(e) DETERMINATION OF WITHHOLDING TABLES.—Section 3402(a) (relating to requirement of withholding) is amended by adding at the following new paragraph:

''(3) CHANGES MADE BY SECTION 2 OF THE ECONOMIC INSURANCE TAX CUT OF 2001.—Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) through the reduction of the amount of withholding required with respect to taxable years beginning in calendar year 2001 to reflect the effective date of the amendments made by section 2 of the Economic Insurance Tax Cut of 2001, and such modification shall take effect on the first day of the first month beginning after the date of the enactment of such Act.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2000.

(2) AMENDMENTS TO WITHHOLDING PROVISIONS.—The amendments made by paragraphs (3) and (4) of subsection (d) shall apply to amounts paid after December 31, 2000.

Mr. CORZINE. Mr. President, I am pleased to join with my distinguished colleague from Florida, Senator GRAHAM, in introducing the legislation to establish a new 10-percent tax bracket.

This bill would provide a simple, fair, and fiscally responsible tax cut that can be enacted quickly, and that can provide an important insurance policy against the risk of an economic slowdown, a slowdown that to most observers appears to be more real and potentially deeper than perceived even as early as in January of this year.

To me, there is little question that our economy needs stimulus, fiscally as well as monetarily, to return to a moderate growth path. The question for policymakers is how to make that happen.

Some, including Fed Chairman Alan Greenspan, have questioned whether Congress is capable of enacting a tax cut quickly enough to prevent a recession or even help lift us out of one on a timely basis. I think we can. In any case, as many other economists, Chairman Greenspan has argued that tax cuts would be helpful once an economic downturn is upon us, if a tax cut were implemented expeditiously.

To make any tax cut effective as an economic insurance policy, Congress and the President need to reach agreement quickly. To facilitate such an agreement, we are proposing that Congress defer consideration of the long list of worthy, and maybe some less worthy, tax cut proposals currently under debate, and, for now, adopt a very straightforward, simple approach.

President Bush has already proposed the creation of a new 10-percent rate bracket for income of up to $12,000 for couples who are currently taxed at 15 percent. The corresponding level for single taxpayers, under the President's proposal, would be $6,000. However, as originally proposed, the Bush rate cut would not be fully effective until 2006.

Senator GRAHAM and I are proposing to immediately—and retroactively for this year—create a 10-percent rate bracket and increase the threshold of that bracket to $19,000 for married taxpayers and $9,500 for individuals.

There are several reasons why this 10-percent compromise makes sense to us. First, it provides equitable relief to taxpayers at all different income levels. All couples with income tax liabilities would save $950 annually or have their tax liability eliminated entirely.

Second, middle-class families are more likely to spend a tax cut than the wealthier families favored under some aspects of the President's plan. Our proposal would be more effective in boosting the economy now.

Third, our proposal would put roughly $60 billion of the annual non-Social Security surplus into a retroactive tax cut. This is the amount that economists tell us is needed to achieve a noticeable economic impact this year. At this level, we would expect that tax cut to boost GDP by one-half to three-quarters of a percentage point.

Fourth, because of its simplicity, the proposal could be debated, enacted, and implemented very quickly. I think the latter is very important. In fact, if the President and the bipartisan congressional leadership were to come to an agreement, announce an agreement on this package, business and consumer confidence in private spending could be bolstered almost immediately. Later, once the proposal is signed into law, withholding tables could be adjusted in a matter of weeks. That is where the simplicity comes in. By contrast, many of the President's and Congress's proposals are not only controversial and would draw lengthy debate, but would take much longer to be able to be implemented into law.

Finally, while providing a real economic stimulus up front, the cost of our proposal is something that is doable within the current context of our budget. The cost of our proposal is roughly $700 billion. This would not preclude further debt reduction, tax cuts, or spending priorities, such as improvements in education, as the President has suggested, and prescription drug coverage, or increases in defense spending.

By contrast, the President's original proposal provides very limited stimulus up front—only $21 billion in 2001—yet threatens to starve the Government of needed resources in later years, especially when our obligations to Social Security and Medicare begin to grow substantially.

Our 10-percent compromise asks both parties to temporarily give up their favorite tax cut proposals in the interests of a quick compromise which would benefit the country, which would apply the principle that a rising tide lifts all boats. We do not accept the common wisdom that Washington is incapable of acting quickly. There is a need. When it really matters, we know we can keep things simple, and we can get things done, and make them happen.

I congratulate Senator GRAHAM. And I very much appreciate the opportunity to introduce this legislation. We look forward to working with the Congress to try to get a quick and stimulative and simple proposal through the Congress.

By Mr. WYDEN:

S. 483 A bill to amend title 49, United States Code, to improve the disclosure of information to airline passengers and the enforceability of airline passengers and the enforceability of airline passengers' rights under airline customer service agreements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, today I am introducing legislation to provide enforceable consumer protections for airline passengers. The bill I introduce today is the result of a process that started over two years ago, when I first introduced bipartisan passenger rights

legislation. Instead of enacting that legislation, Congress decided to give the airlines a year-and-a-half to improve customer service through voluntary plans. At the end of that time, the Department of Transportation Inspector General was to report to Congress on the airlines' progress.

The Inspector General released his report last month. It is a carefully researched and balanced document, and it finds that, while the airlines have made progress in some areas, there are also significant continued shortcomings. In particular, in many cases passengers are still not receiving reliable and timely communications about flight delays, cancellations, and diversions. The report recommends a number of specific, reasonable steps that could be taken to improve the experience of the flying public.

I want to commend the chairman of the Commerce Committee, Senator MCCAIN, and Senators HOLLINGS and HUTCHISON, for the bill they have introduced, which reflects the essence of the Inspector General's report. My bill is intended to complement and further the discussion that legislation has begun.

My legislation closely tracks the findings and recommendations of the Inspector General's report. First, it features ''right-to-know'' provisions that require airlines to tell customers when a flight they are about to book a ticket on is chronically delayed or canceled, and to provide better information about overbooking, frequent flyer programs, and lost baggage. The bill also contains provisions to enhance and improve the enforcement of the airlines' customer service commitments, such as requirement that each airline incorporate its commitments into its binding contract of carriage. Finally, the bill calls on the Secretary of Transportation to review existing regulations to make sure airlines adhere to their commitments, and to encourage the establishment of a baseline standard of service for all airlines.

The provisions of this bill are not radical, nor are they regulatory; they are basic reasonable steps based directly on the specific findings and recommendations of the Inspector General. Most importantly, they would create meaningful, enforceable protections for consumers in the areas where the Inspector General has identified ongoing problems.

I am hopeful that my colleagues here in the Senate will join me in supporting this legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 483

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 ''Fair Treatment of Airline Passengers Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) United States airline traffic is increasing. The number of domestic passengers carried by United States air carriers has nearly tripled since 1978, to over 660 million annually. The number is expected to grow to more than 1 billion by 2010. The number of domestic flights has been steadily increasing as well.

(2) The Inspector General of the Department of Transporation has found that with this growth in traffic have come increases in delays, cancellations, and customer dissatisfaction with air carrier service.

(A) The Federal Aviation Administration has reported that, between 1995 and 2000, delays increased 90 percent and cancellations increased 104 percent. In 2000, over 1 in 4 flights were delayed, canceled, or diverted, affecting approximately 163 million passengers.

(B) At the 30 largest United States airports, the number of flights with taxi-out times of 1 hour or more increased 165 percent between 1995 and 2000. The number of flights with taxi-out times of 4 hours or more increased 341 percent during the same period.

(C) Certain flights, particularly those scheduled during peak periods at the nation's busiest airports, are subject to chronic delays. In December, 2000, 626 regularly-scheduled flights arrived late 70 percent of the time or more, as reported by the Department of Transportation.

(D) Consumer complaints filed with the Department of Transportation about airline travel have nearly quadrupled since 1995. The Department of Transportation Inspector General has estimated that air carriers receive between 100 and 400 complaints for every complaint filed with the Department of Transportation.

(3) At the same time as the number of complaints about airline travel has increased, the resources devoted to Department of Transportation handling of such complaints have declined sharply. The Department of Transportation Inspector General has reported that the staffing of the Department of Transportation office responsible for handling airline customer service complaints declined from 40 in 1985 to just 17 in 2000.

(4) In June, 1999, the Air Transport Association and its member airlines agreed to an Airline Customer Service Commitment designed to address mounting consumer dissatisfaction and improve customer service in the industry.

(5) The Department of Transportation Inspector General has reviewed the airlines' implementation of the Airline Customer Service Commitment. The Inspector General found that:

(A) The Airline Customer Service Commitment has prompted air carriers to address consumer concerns in many areas, resulting in positive changes in how air travelers are treated.

(B) Despite this progress, there continue to be significant shortfalls in reliable and timely communication with passengers about flight delays and cancellations. Reports to passengers about flight status are frequently untimely, incomplete, or unreliable.

(C) Air carriers need to do more, in the areas under their control, to reduce overscheduling, the number of chronically-late or canceled flights, and the amount of checked baggage that does not show up with the passenger upon arrival.

(D) A number of further steps could be taken to improve the effectiveness and enforceability of the Airline Customer Service Commitment and to improve the consumer protections available to commercial air passengers.

SEC. 3. FAIR TREATMENT OF AIRLINE PASSENGERS.

(a) IN GENERAL.—Subchapter I of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

''§ 41722. Airline passengers' right to know

''(a) DISCLOSURE OF ON-TIME PERFORMANCE.—Whenever any person contacts an air carrier to make a reservation or to purchase a ticket on a consistently-delayed or canceled flight, the air carrier shall disclose (without being requested), at the time the reservation or purchase is requested, the on-time performance and cancellation rate for that flight for the most recent month for which data is available. For purposes of this paragraph, the term 'consistently-delayed or canceled flight' means a regularly-scheduled flight—

''(1) that has failed to arrive on-time (as defined in section 234.2 of title 14, Code of Federal Regulations) at least 40 percent of the time during the most recent 3-month period for which data are available; or

''(2) at least 20 percent of the departures of which have been canceled during the most recent 3-month period for which data are available.

''(b) ON-TIME PERFORMANCE POSTED ON WEBSITE.—An air carrier that has a website on the Internet shall include in the information posted about each flight operated by that air carrier the flight's on-time performance (as defined in section 234.2 of title 14, Code of Federal Regulations) for the most recent month for which data is available.

''(c) PASSENGER INFORMATION CONCERNING DELAYS, CANCELLATIONS, AND DIVERSIONS.—

''(1) IN GENERAL—Whenever a flight is delayed, canceled, or diverted, the air carrier operating that flight shall provide to customers at the airport and on board the aircraft, in a timely, reasonable, and truthful manner, the best available information regarding such delay, cancellation, or diversion, including—

''(A) the cause of the delay, cancellation, or diversion; and

''(B) in the case of a delayed flight, the carrier's best estimate of the departure time.

''(2) PUBLIC INFORMATION.—An air carrier that provides a telephone number or website for the public to obtain flight status information shall ensure that the information provided via such telephone number or website will reflect the best and most current information available concerning delays, cancellations, and diversions.

''(d) PRE-DEPARTURE NOTIFICATION SYSTEM.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, each air carrier that is a reporting carrier (as defined in section 234.2 of title 14, Code of Federal Regulations) shall establish a reasonable system (taking into account the size, financial condition, and cost structure of the air carrier) for notifying passengers before their arrival at the airport when the air carrier knows sufficiently in advance of the check-in time for their flight that the flight will be canceled or delayed by an hour or more.

''(e) COORDINATION OF MONITORS; CURRENT INFORMATION.—At any airport at which the status of flights to or from that airport is displayed to the public on flight status monitors operated by the airport, each air carrier the flights of which are displayed on the monitors shall work closely with the airport to ensure that flight information shown on the monitors reflects the best and most current information available.

''(f) FREQUENT FLYER PROGRAM INFORMATION.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, each air carrier that maintains a frequent flyer program shall increase

the comprehensiveness and accessibility to the public of its reporting of frequent flyer award redemption information. The information reported shall include—

''(1) the percentage of successful redemptions of requested frequent flyer awards for free tickets or class-of-service upgrades for the air carrier;

''(2) the percentage of successful redemptions of requested frequent flyer awards for free tickets or class-of-service upgrades for each flight in the air carrier's top 100 origination and destination markets; and

''(3) the percentage of seats available for frequent flyer awards on each flight in its top 100 origination and destination markets.

''(g) OVERBOOKING.—

''(1) OVERSOLD FLIGHT DISCLOSURE.—An air carrier shall inform a ticketed passenger, upon request, whether the flight on which the passenger is ticketed is oversold.

''(2) BUMPING COMPENSATION INFORMATION.—An air carrier shall inform passengers on a flight what the air carrier will pay passengers involuntarily denied boarding before making offers to passengers to induce them voluntarily to relinquish seats.

''(3) DISCLOSURE OF BUMPING POLICY.—An air carrier shall disclose, both on its Internet website, if any, and on its ticket jackets, its criteria for determining which passengers will be involuntarily denied boarding on an oversold flight and its procedures for offering compensation to passengers voluntarily or involuntarily denied boarding on an oversold flight.

''(h) MISHANDLED BAGGAGE REPORTING.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, each air carrier shall revise its reporting for mishandled baggage to show—

''(1) the percentage of checked baggage that is mishandled during a reporting period;

''(2) the number of mishandled bags during a reporting period; and

''(3) the average length of time between the receipt of a passenger's claim for missing baggage and the delivery of the bag to the passenger.

''(i) SMALL AIR CARRIER EXCEPTION.—This section does not apply to an air carrier that operates no civil aircraft designed to have a maximum passenger seating capacity of more than 30 passengers.

''§ 41723. Enforcement and enhancement of airline passenger service commitments

''(a) ADOPTION OF CUSTOMER SERVICE PLAN.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, an air carrier certificated under section 41102 that has not already done so shall—

''(1) develop and adopt a customer service plan designed to implement the provisions of the Airline Customer Service Commitment executed by the Air Transport Association and 14 of its member airlines on June 17, 1999;

''(2) incorporate its customer service plan in its contract of carriage;

''(3) incorporate the provisions of that Commitment if, and to the extent that those provisions are more specific than, or relate to issues not covered by, its customer service plan;

''(4) submit a copy of its customer service plan to the Secretary of Transportation;

''(5) post a copy of its contract of carriage on its Internet website, if any; and

''(6) notify all ticketed customers, either at the time a ticket is purchased or on a printed itinerary provided to the customer, that the contract of carriage is available upon request or on the air carrier's website.

''(b) MODIFICATIONS.—Any modification in any air carrier's customer service plan shall be promptly incorporated in its contract of carriage, submitted to the Secretary, and posted on its website.

''(c) QUALITY ASSURANCE AND PERFORMANCE MEASUREMENT SYSTEM.—

''(1) AIR CARRIERS.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, an air carrier certificated under section 41102, after consultation with the Inspector General of the Department of Transportation, shall—

''(A) establish a quality assurance and performance measurement system for customer service; and

''(B) establish an internal audit process to measure compliance with its customer service plan.

''(2) DOT APPROVAL REQUIRED.—Each air carrier shall submit the measurement system established under paragraph (1)(A) and the audit process established under paragraph (1)(B) to the Secretary of Transportation for review and approval.

''(d) CUSTOMER SERVICE PLAN ENHANCEMENTS.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, an air carrier certificated under section 41102 shall—

''(1) amend its customer service plan to specify that it will offer to a customer purchasing a ticket at any of the air carrier's ticket offices or airport ticket service counters the lowest fare available for which that customer is eligible; and

''(2) establish performance goals designed to minimize incidents of mishandled baggage.

''(e) SMALL AIR CARRIER EXCEPTION.—This section does not apply to an air carrier that operates no civil aircraft designed to have a maximum passenger seating capacity of more than 30 passengers.''.

(b) CIVIL PENALTY.—Section 46301(a)(7) is amended by striking ''40127 or 41712'' and inserting ''40127, 41712, 41722, or 41723''.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 417 of title 49, United States Code, is amended by inserting after the item relating to section 41721 the following:

''41722. Airline passengers' right to know
''41723. Enforcement and enhancement of airline passenger service commitments''.

SEC. 4. REQUIRED ACTION BY SECRETARY OF TRANSPORTATION.

(a) UNIFORM MINIMUM CHECK-IN TIME; BAGGAGE STATISTICS; BUMPING COMPENSATION.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) establish a uniform check-in deadline and require air carriers to disclose, both in their contracts of carriage and on ticket jackets, their policies on how those deadlines apply to passengers making connections;

(2) revise the Department of Transportation's method for calculating and reporting the rate of mishandled baggage for air carriers to reflect the reporting requirements of section 41722(h) of title 49, United States Code; and

(3) revise the Department of Transportation's Regulation (14 C.F.R. 250.5) governing the amount of denied boarding compensation for passengers denied boarding involuntarily to increase the maximum amount thereof.

(b) REVIEW OF REGULATIONS.—

(1) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Secretary shall complete a thorough review of the Department of Transportation's regulations that relate to air carriers' treatment of customers, and make such modifications as may be necessary or appropriate to ensure the enforceability of those regulations and the provisions of this Act and of title 49, United States Code, that relate to such treatment, or otherwise to promote the purposes of this Act.

(2) SPECIFIC AREAS OF REVIEW.—As part of such review and modification, the Secretary shall, to the extent necessary or appropriate—

(A) modify existing regulations to reflect this Act and sections 41722 and 41723 of title 49, United States Code;

(B) modify existing regulations to the extent necessary to ensure that they are sufficiently clear and specific to be enforceable;

(C) establish minimum standards, compliance with which can be measured quantitatively, of air carrier performance with respect to customer service issues addressed by the Department of Transportation regulations or the Airline Customer Service Commitment executed by the Air Transport Association and 14 of its member airlines on June 17, 1999;

(D) address the manner in which the Department of Transportation regulations should treat customer service commitments that relate to actions occurring prior to the purchase of a ticket, such as the commitment to offer the lowest available fare, and whether such the inclusion of such commitments in the contract of carriage creates an enforceable obligation prior to the purchase of a ticket;

(E) restrict the ability of air carriers to include provisions in the contract of carriage restricting a passenger's choice of forum in the event of a legal dispute; and

(F) require each air carrier to report information to Department of Transportation on complaints submitted to the air carrier, and modify the reporting of complaints in the Department of Transportation's monthly customer service reports, so those reports will reflect complaints submitted to air carriers as well as complaints submitted to the Department.

(3) EXPEDITED PROCEDURE.—Within 1 year after the date of enactment of this Act, the Secretary shall complete all actions necessary to establish regulations to implement the requirements of this subsection.

SEC. 5. IMPROVED ENFORCEMENT OF AIR PASSENGER RIGHTS.

(a) USE OF AUTHORIZED FUNDS.—In utilizing the funds authorized by section 223 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century for the purpose of enforcing the rights of air travelers, the Secretary of Transportation shall give priority to the areas identified by the Inspector General of the Department of Transportation as needing improvement in Report No. AV-2001-020, submitted to the Congress on February 12, 2001.

(b) SECRETARY REQUIRED TO CONSULT THE SECRETARY'S INSPECTOR GENERAL.—The Secretary of Transportation, in carrying out this Act and the provisions of section 41722 and 41723 of title 49, United States Code, shall consult with the Inspector General of the Department of Transportation.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. DEWINE, Mr. DODD, Ms. COLLINS, Mrs. LINCOLN, and Mr. BREAUX):

S. 484. A bill to amend part B of title IV of the Social Security Act to create a grant program to promote joint activities among Federal, State, and local public child welfare and alcohol and drug abuse prevention and treatment agencies; to the Committee on Finance.

Ms. SNOWE. Mr. President I rise today to introduce the Child Protection/Alcohol and Drug Partnership Act,

and I am pleased to be joined by my good friends, Senators ROCKEFELLER, DEWINE, DODD, COLLINS, and LINCOLN. Mr. President this bill is an enormously important piece of legislation. It provides the means for states to support some of our most vulnerable families, families who are struggling with alcohol and drug abuse, and the children who are being raised in these homes.

It is obvious, both anecdotally and statistically, that child welfare is significantly impacted by parental substance abuse. And it makes a lot of sense to fund state programs to address these two issues in tandem. The real question in designing and supporting child welfare programs is how can we, public policy makers, government officials, welfare agencies, honestly expect to improve child welfare without appropriately and adequately addressing the root problems affecting these children's lives?

We know that substance abuse is the primary ingredient in child abuse and neglect. Most studies find that between one-third and two-thirds, and some say as high as 80 percent to 90 percent, of children in the child welfare system come from families where parental substance abuse is a contributing factor.

The Child Protection/Alcohol and Drug Partnership Act creates a new five-year $1.9 billion state block grant program to address the connection between substance abuse and child welfare. Payments would be made to promote joint activities among federal, state, and local public child welfare and alcohol and drug prevention and treatment agencies. Our underlying belief, and the point of this bill, is to encourage existing agencies to work together to keep children safe.

HHS will award grants to States and Indian tribes to encourage programs for families who are known to the child welfare system and have alcohol and drug abuse problems. These grants will forge new and necessary partnerships between the child protection agencies and the alcohol and drug prevention and treatment agencies so they can work together to provide services fort this population. The program is designed to increase the capacity of both the child welfare and alcohol and drug systems to comprehensively address the needs of these families to improve child safety, family stability, and permanence, and to promote recovery from alcohol and drug problems.

Statistics paint an unhappy picture for children of substance abusing parents: a 1998 report by the National Committee to Prevent Child Abuse found that 36 states reported that parental substance abuse and poverty are the top two problems exhibited by families reported for child maltreatment. And a 1997 survey conducted by the Child Welfare League of America found that at least 52 percent of placements into out-of-home care were due in part to parental substance abuse.

Children whose parents abuse alcohol and drugs are almost three times likelier to be abused and more than four times likelier to be neglected than children of parents who are not substance abusers. Children in alcohol-abusing families were nearly four times more likely to be maltreated overall, almost five times more likely to be physically neglected, and 10 times more likely to be emotionally neglected than children in families without alcohol problems.

A 1994 study published in the American Journal of Public Health fund that children prenatally exposed to substances have been found to be two to three times more likely to be abused than non-exposed children. And as many as 80 percent of prenatally drug exposed infants will come to the attention of child welfare before their first birthday. Abused and neglected children under age six face the risk of more severe damage than older children because their brains and neurological systems are still developing.

Unfortunately, child welfare agencies estimate that only a third of the 67 percent of the parents who need drug or alcohol prevention and treatment services actually get help today.

This bill is about preventing problems. My colleagues and I know that what is most important here is the safety and well-being of America's children. We expect much of our youth because they are the future of our nation. In turn, we must be willing to give them the support they need to learn and grow, so that they can lead healthy and productive lives.

In 1997 Congress passed the Adoption and Safe Families Act, ASFA, authored by the late Senator John Chafee. ASFA promotes safety, stability, and permanence for all abused and neglected children and requires timely decision-making in all proceedings to determine whether children can safely return home, or whether they should be moved to permanent, adoptive homes. Specifically, the law requires a State to ensure that services are provided to the families of children who are at risk, so that children can remain safely with their families or return home after being in foster care.

The bill we are introducing today identifies a very specific area in which families and children need services, substance abuse. And it will ensure that states have the funding necessary to provide services as required under the Adoption and Safe Families Act.

On March 23, 2000, Kristine Ragaglia, Commissioner of the Connecticut Department of Children and Families, testified before the House Subcommittee on Human Resources on this issue. She said simply that ''If substance abuse issues are left unaddressed, many of the system's efforts to protect children and to promote positive change in families will be wasted.'' This legislation aims to address this very gap in our nation's child protection system.

I am pleased that this legislation has been endorsed by the American Academy of Child & Adolescent Psychiatry; the American Academy of Pediatrics; the American Prosecutors Research Institute; the American Psychological Association; the American Public Human Services Association; the Child Welfare League of America; the Children's Defense Fund; Fight Crime: Invest in Kids; the Maine Association of Prevention Programs; the Maine Association of Substance Abuse Programs; the Maine Children's Trust; Mainely Parents; the Massachusetts Society for the Prevention of Cruelty to Children; the National Conference of State Legislators; the New York State Office of Alcoholism and Substance Abuse Services; and Prevent Child Abuse America.

I encourage my colleagues to take a look at our bill, to think seriously about the future for kids in their states, and to work with us in passing this very important piece of legislation. I ask unanimous consent that a fact sheet and section-by-section description of the bill be printed in the RECORD.

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

FACT SHEET—CHILD PROTECTION/ALCOHOL AND DRUG PARTNERSHIP ACT OF 2001

The Child Protection/Alcohol and Drug Partnership Act of 2001 is a bill to create a grant program to promote joint activities among Federal, State, and local public child welfare and alcohol and drug abuse prevention and treatment agencies to improve child safety, family stability, and permanence for children in families with drug and alcohol problems, as well as promote recovery from drug and alcohol problems.

Child welfare agencies estimate that only a third of the 67 percent of the parents who need drug or alcohol prevention and treatment services actually get help today. This bill builds on the foundation of the Adoption and Safe Families Act of 1997 which requires states to focus on a child's need for safety, health and permanence. The bill creates new funding for alcohol and drug treatment and other activities that will serve the special needs of these families to either provide treatment for parents with alcohol and drug abuse problems so that a child can safely return to their family or to promote timely decisions and fulfill the requirement of the 1997 Adoption and Safe Families Act to provide services prior to adoption.

Grants to promote child protection/alcohol and drug partnerships

In an effort to improve child safety, family stability, and permanence as well as promote recovery from alcohol and drug abuse problems. HHS will award grants to States and Indian tribes to encourage programs for families who are known to the child welfare system and have alcohol and drug abuse problems. Such grants will forge new and necessary partnerships between the child protection agencies and the alcohol and drug prevention and treatment agencies in States so they can together provide necessary services for this unique population.

These grants will help build new partnerships to provide alcohol and drug abuse prevention and treatment services that are timely, available, accessible, and appropriate and include the following components:

(A) Preventive and early intervention services for the children of families with alcohol and drug problems that combine alcohol and drug prevention services with mental health

and domestic violence services, and recognize the mental, emotional, and developmental problems the children may experience.

(B) Prevention and early intervention services for families at risk of alcohol and drug problems.

(c) Comprehensive home-based, out-patient and residential treatment options.

(D) Formal and informal after-care support for families in recovery that promote child safety and family stability.

(E) Services and supports that promote positive parent-child interaction.

Forging new partnerships

GAO and HHS studies indicate that the existing programs for alcohol and drug treatment do not effectively service families in the child protection system. Therefore, this new grant program will help eliminate barriers to treatment and to child safety and permanence by encouraging agencies to build partnerships and conduct joint activities including:

(A) Promote appropriate screening and assessment of alcohol and drug problems.

(B) Create effective engagement and retention strategies that get families into timely treatment.

(C) Encourage joint training for staff of child welfare and alcohol and drug abuse prevention and treatment agencies, and judges and other court personnel to increase understanding of alcohol and drug problems related to child abuse and neglect and to more accurately identify alcohol and drug abuse in families. Such training increases staff knowledge of the appropriate resources that are available in the communities, and increases awareness of the importance of permanence for children and the urgency for expedited time lines in making these decisions.

(D) Improve data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine which approaches are most effective.

(E) Evaluate strategies to identify the effectiveness of treatment and those parts of the treatment that have the greatest impact on families in different circumstances.

New, targeted investments

A total of $1.9 billion will be available to eligible states with funding of $200 million in the first year expanding to $575 million by the last year. The amount of funding will be based on the State's number of children under 18, with a small state minimum to ensure that every state gets a fair share. Indian tribes will have a 3–5 percent set aside. State child welfare and alcohol and drug agencies shall have a modest matching requirement for funding beginning with a 15 percent match and gradually increasing to 25 percent. The Secretary has discretion to waive the State match in cases of hardship.

Accountability and performance measurement

To ensure accountability, HHS and the related State agencies must establish indicators within 12 months of the enactment of this law which will be used to assess the State's progress under this program. Annual reports by the States must be submitted to HHS. Any state that fails to submit its report will lose its funding for the next year, until it comes into compliance. HHS must issue an annual report to Congress on the progress of the Child Protection/Alcohol and Drug Partnership grants.

SECTION-BY-SECTION—CHILD PROTECTION/ALCOHOL AND DRUG PARTNERSHIP ACT OF 2001

A bill to amend part B of title IV of the Social Security Act to create a grant program to promote joint activities among Federal, State, and Local public child welfare and alcohol and drug abuse prevention and treatment agencies.

Grants to promote child protection/alcohol and drug partnership for children

In an effort to improve child safety, family stability, and permanence, as well as promote recovery from alcohol and drug abuse problems, the Secretary may award grants to eligible States and Indian tribes to foster programs for families who are known to the child welfare system to have alcohol and drug abuse problems. The Secretary shall notify States and Indian tribes of approval or denial not later than 60 days after submission.

State plan requirements

In order to meet the prevention and treatment needs of families with alcohol and drug abuse problems in the child welfare system and to promote child safety, permanence, and family stability, State agencies will jointly work together, creating a plan to identify the extent of the drug and alcohol abuse problem.

Creation of plan—State agencies will provide data on appropriate screening and assessment of cases, consultation on cases involving alcohol and drug abuse, arrangements for addressing confidentiality and sharing of information, cross training of staff, co-location of services, support for comprehensive treatment for parents and their children, and priority of child welfare families for assessment or treatment.

Identify activities—A description of the activities and goals to be implemented under the five-year funding cycle should be identified, such as: identify and assess alcohol and drug treatment needs, identify risks to children's safety and the need for permanency, enroll families in appropriate services and treatment in their communities, and regularly assess the progress of families receiving such treatment.

Implement prevention and treatment services—States and Indian tribes should implement individualized alcohol and drug abuse prevention and treatment services that are available, accessible, and appropriate that include the following components:

(A) Preventive and early intervention services for the children of families with alcohol and drug abuse problems that integrate alcohol and drug abuse prevention services with mental health and domestic violence services, as well as recognizing the mental, emotional, and developmental problems the children may experience.

(B) Prevention and early intervention services for parents at risk for alcohol and drug abuse problems.

(C) Comprehensive home-based, out-patient and residential treatment options.

(D) Formal and informal after-care support for families in recovery.

(E) Services and programs that promote parent-child interaction.

Sharing information among agencies—Agencies should eliminate existing barriers to treatment and to child safety and permanence by sharing information among agencies and learning from the various treatment protocols of other agencies such as:

(A) Creating effective engagement and retention strategies.

(B) Encouraging joint training of child welfare staff and alcohol and drug abuse prevention agencies, and judges and court staff to increase awareness and understanding of drug abuse and related child abuse and neglect and more accurately identify abuse in families, increase staff knowledge of the services and resources that are available in the communities, and increase awareness of permanence for children and the urgency for time lines in making these decisions.

(C) Improving data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine which approaches are most effective.

(D) Evaluation strategies to identify the effectiveness of treatment that has the greatest impact on families in different circumstances.

(E) Training and technical assistance to increase the State's capacity to perform the above activities.

Plan descriptions and assurances—States and Indian tribes should create a plan that includes the following descriptions and assurances:

(A) A description of the jurisdictions in the State whether urban, suburban, or rural, and the State's plan to expand activities over the 5-year funding cycle to other parts of the State.

(B) A description of the way in which the State agency will measure progress, including how the agency will jointly conduct an evaluation of the results of the activities.

(C) A description of the input obtained from staff of State agencies, advocates, consumers of prevention and treatment services, line staff from public and private child welfare and drug abuse agencies, judges and court staff, representatives of health, mental health, domestic violence, housing and employment services, as well as representative of the State agency in charge of administering the temporary assistance to needy families program (TANF).

(D) An assurance of coordination with other services provided under other Federal or federally assisted programs including health, mental health, domestic violence, housing, employment programs, TANF, and other child welfare and alcohol and drug abuse programs and the courts.

(E) An assurance that not more than 10 percent of expenditures under the State plan for any fiscal year shall be for administrative costs. However, Indian tribes will be exempt from this limitation and instead may use the indirect cost rate agreement in effect for the tribe.

(F) An assurance from States that Federal funds provided will not be used to supplant Federal or non-Federal funds for services and activities provided as of the date of the submission of the plan. However, Indian tribes will be exempt from this provision.

Amendments—A State or Indian tribe may amend its plan, in whole or in part at any time through a plan amendment. The amendment should be submitted to the Secretary not later than 30 days after the date of any changes. Approval from the Secretary shall be presumed unless, the State has been notified of disapproval within 60 days after receipt.

Special application to Indian tribes—The Indian tribe must submit a plan to the Secretary that describes the activities it will undertake with both the child welfare and alcohol and drug agencies that serve its children to address the needs of families who come to the attention of the child welfare agency who have alcohol and drug problems. The Indian tribe must also meet other applicable requirements, unless the Secretary determines that it would be inappropriate based on the tribe's resources, needs, and other circumstances.

Appropriation of funds

Appropriations—A total of 1.9 billion dollars will be appropriated to eligible States and Indian tribes at the progression rate of:

(1) for fiscal year 2002, $200,000,000;
(2) for fiscal year 2003, $275,000,000;
(3) for fiscal year 2004, $375,000,000;
(4) for fiscal year 2005, $475,000,000; and
(5) for fiscal year 2006, $575,000,000.

Territories—The Secretary of HHS shall reserve 2 percent of the amount appropriated each fiscal year for payments to Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Northern Mariana Islands. In addition, the Secretary shall reserve from 3 to 5 percent of the amount appropriated for direct payment to Indian tribes.

Research and training—The Secretary shall reserve 1 percent of the appropriated amount for each fiscal year for practice-based research on the effectiveness of various approaches for screening, assessment, engagement, treatment, retention, and monitoring of families and training of staff in such areas. In addition, the Secretary will also ensure that a portion of these funds are used for research on the effectiveness of these approaches for Indian children and the training of staff.

Determination of use of funds—Funds may only be used to carry out a specific research agenda established by the Secretary, together with the Assistant Secretary of the Administration for Children and Families and the Administrator of Substance Abuse and Mental Health Services Administration with input from public and private nonprofit providers, consumers, representatives of Indian tribes and advocates.

Payments to states

Amount of grant to States and territories—Each eligible State will receive an amount based on the number of children under the age of 18 that reside in that State. There will be a small state minimum of .05 percent to ensure that all States are eligible for sufficient funding to establish a program.

Amount of grant to Indian tribes or tribal organizations—Indian tribes shall be eligible for a set aside of 3 to 5 percent. This amount will be distributed based on the population of children under 18 in the tribe.

State matching requirement—States shall provide, through non-Federal contributions, the following applicable percentages for a given fiscal year:

(A) for fiscal years 2002 and 2003, 15 percent match;

(B) for fiscal years 2004 and 2005, 20 percent match; and

(C) for fiscal year 2006, 25 percent match.

Source of match—The non-Federal contributions required of States may be in cash or in-kind including plant equipment or services made directly from donations from public or private entities. Amounts received from the Federal Government may not be included in the applicable percentage of contributions for a given fiscal year. However, Indian tribes may use three Federal sources of matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act Funds, and Community Block Grant funds.

Waiver—The Secretary may modify matching funds if it is determined that extraordinary economic conditions in the State justify the waiver. Indian tribes' matching funds may also be modified if the Secretary determines that it would be inappropriate based on the resources and needs of the tribe.

Use of funds and deadline for request of payment—Funds may only be used to carry out activities specified in the plan, as approved by the Secretary. Each State or Indian tribe shall apply to be paid funds not later than the beginning of the fourth quarter of a fiscal year or they will be reallotted.

Carryover and reallocation of funds—Funds paid to an eligible State or Indian tribe may be used in that fiscal year or the succeeding fiscal year. If a State does not apply for funds allotted within the time provided, the funds will be reallotted to one or more other eligible States on the basis of the needs of that individual state. In the case of Indian tribes, funds will be reallotted to remaining tribes that are implementing approved plans.

Performance measurement

Establishment of indicators—The Secretary, in consultation with the Assistant Secretary for the Administration for Children and Families, the Administrator of the Substance Abuse and Mental Health Services Administration within HHS, and with state and local government, public officials responsible for administering child welfare and alcohol and drug abuse prevention and treatment programs, court staff, consumers of the services, and advocates for these children and parents will establish indicators within 12 months of the enactment of this law which will be used to assess the performance of States and Indian tribes. A State or Indian tribe will be measured against itself, assessing progress over time against a baseline established at the time the grant activities were undertaken.

Illustrative examples—Indicators of activities to be measured include:

(A) Improve screening and assessment of families.

(B) Increase availability of comprehensive individualized treatment.

(C) Increase the number/proportion of families who enter treatment promptly.

(D) Increase engagement and retention.

(E) Decrease the number of children who re-enter foster care after being returned to families who had alcohol or drug problems.

(F) Increase number/proportion of staff trained.

(G) Increase the proportion of parents who complete treatment and show improvement in their employment status.

Reports—The child welfare and alcohol and drug abuse and treatment agencies in each eligible state, and the Indian tribes that receive funds shall submit no later than the end of the first fiscal year, a report to the Secretary describing activities carried out, and any changes in the use of the funds planned for the succeeding fiscal year. After the first report is submitted, a State or Indian tribe must submit to the Secretary annually, by the end of the third quarter in the fiscal year, a report on the application of the indicators to its activities, an explanation of why these indicators were chosen, and the results of the evaluation to date. After the third year of the grant all of the States must include indicators that address improvements in treatment. A final report on evaluation and the progress made must be submitted to the Secretary not later than the end of each five year funding cycle of the grant.

Penalty—States or Indian tribes that fail to report on the indicators will not be eligible for grant funds for the fiscal year following the one in which it failed to report, unless a plan for improving their ability to monitor and evaluate their activities is submitted to the Secretary and then approved in a timely manner.

Secretarial reports and evaluations—Beginning October 1, 2003, the Secretary, in consultation with the Assistant Secretary for the Administration for Children and Families, and the Administrator of the Substance Abuse and Mental Health Service Administration, shall report annually, to the Committee on Ways and Means of the House of the Representatives and the Committee on Finance of the Senate on the joint activities, indicators, and progress made with families.

Evaluations—Not later than six months after the end of each five year funding cycle, the Secretary shall submit a report to the above committees, the results of the evaluations as well as recommendations for further legislative actions.

Mr. ROCKEFELLER. Mr. President, I am here today to talk about our Nation's most vulnerable children, innocent children who have been abused or neglected by parents, many of whom have alcohol and drug abuse problems. Over 500,000 children receive foster care services nationwide, including 3,000 children in West Virginia. These numbers belie our policy that every child deserves a safe, healthy, permanent home, as specified in the fundamental guidelines set forth in the 1997 Adoption and Safe Families Act, ASFA.

National statistics tell us that a majority of families in the child welfare system may struggle with alcohol and/or drug abuse. One recent survey noted that 67 percent of parents involved in child abuse or neglect cases required alcohol or drug treatment, but only one-third of those parents received appropriate treatment or services to address their addiction. In my own state of West Virginia, over half of the children placed in the foster care system have families with substance abusing behaviors. We are also aware of countless numbers of other children who, while not receiving foster care services, are at risk of neglect due their parents' addictions.

Another stunning, sad statistic is that children with open child welfare cases whose parents have substance abuse problems are younger than other children in the foster care system and are more likely to suffer severe, chronic neglect from their parents. Once these children are placed in the foster care system, they tend to stay in care longer than other children.

It will be impossible to achieve the critical goal of safe, healthy, and permanent homes for children in the child protection system if we do not address the problems of parental alcohol and drug abuse.

Examining the effects of substance abuse involves complex and far-reaching issues. As part of the 1997 Adoption and Safe Families Act, the Department of Health and Human Services, HHS, was directed to study substance abuse as it relates to and within the framework of the child protection system. Their important report, ''Blending Perspectives and Building Common Ground,'' outlines many challenges. It concludes that we lack the necessary array of appropriate substance abuse treatment programs and services, and emphasizes the well-known lack of services designed for women, especially for women and their children. In addition, the report notes that the separate substance abuse and child protection systems have no purposeful, planned partnership to address the unique needs of abused and neglected children.

The report details the lack of a cooperative, inter-agency relationship between the two systems whose staffs

work diligently to provide services under their own jurisdiction, but have minimal communication, different goals, and divergent service philosophies with regard to each other. For example, each system has different definitions of the ''client served.'' While ASFA views the child as ''the client'' and expects child protection agencies and courts to consider termination, within a 22-month time frame, of parental rights for children receiving foster care service for 15 months, substance abuse treatment providers often view the adult as the client, with different time frames and expectations for recovery.

In order to meet the goals of ASFA, we must develop new ways to encourage these two independent systems to work together on behalf of parents with substance abuse problems and their children. The issues of addiction and children receiving protection services cannot be addressed in isolation. It is essential to consider the total picture: The needs of the child, the needs of the parents, and cost-effective services that meet adoption laws' goal to provide every child with a safe, healthy, and permanent home.

The HHS report identifies significant priorities. First, it calls for building collaborative working relationships between the child protection and substance abuse agencies.

While substance abuse treatment is a challenge in and of itself, the report explains that effective treatment is further complicated for parents with children. The majority of substance abuse treatment programs are not set up to serve both women and their children. While our country in general lacks the comprehensive services needed for such families, there are some models and promising practices on how to serve both parents and children.

One model can be found in my State, the MOTHERS program in Beckley, WV, which serves women and their children. The majority of these women have either lost custody of their children or were under child protection service investigation or mandate, are typically unemployed and untrained for gainful employment, have few aspirations, and wrestle with depression. This innovation program simultaneously addresses the needs of both mothers and their children, through individual and joint therapy, in such areas as recovery, mental health counseling, employment, academic education, healthy living skills, parenting, and family permanency. These services are provided using a residential model where mothers and their children live in a therapeutic environment and receive temporary housing, meal service, recreation activities, and transportation to and from community Alcoholics Anonymous and Narcotics Anonymous meetings. The bill we are introducing today would give other localities the opportunity to develop similar programs or alternative models.

In addition, the HHS report recognizes the importance of research to better understand the relationship between substance abuse and child maltreatment.

Today, I am proud to join with my colleagues, Senators SNOWE, DEWINE, and DODD, to introduce legislation to address the challenges of abused and neglected children whose parents have alcohol and/or drug problems. We have worked with state officials, child advocates, criminal justice officials, and members of the substance abuse community to develop the Child Protection/Alcohol and Drug Partnership Act of 2001. This bill builds on ASFA's fundamental goal of making a child's safety, health, and permanency paramount.

To accomplish this bold purpose, we must invest in a partnership designed to respond to the needs and priorities outlined in the HHS report. I believe that a new program and a new approach are essential. Existing substance abuse treatment programs such as those designed to serve single males cannot respond to the needs of a mother and her child.

To be effective, we must connect child protection and substance abuse treatment staffs and support them to work in partnership to test and identify best practices. Forging new partnerships take time—and it takes money. That is why this bill invests $1.9 billion over 5 years to combat the problems of substance abuse faced by families whose children are sheltered by the child protection system. I understand this is a large sum, but alcohol and drug abuse is an enormous problem in our country and represents an overwhelming financial and human loss. Before reacting to the bill expenditure alone, consider the costs we would incur if we remain silent on this issue. If we do not invest in substance abuse prevention and treatment for such families, we cannot effectively combat the abuse and neglect of children.

Our bill is designed to tackle this tough issue and encourage child protection and substance abuse agencies to work in partnership and promote innovative approaches within both of their systems to support women and their children. This bill can provide funding for outreach services to families, screening and assessment to enhance prevention, outpatient or residential treatment services, retention supports to aid mothers to remain in treatment, and aftercare services to keep families and children safe. This bill also addresses the importance of dual training for the staffs of the child protection and substance abuse treatment systems, to share effective strategies in order to meet the goal of safe and permanent homes for children.

If we choose to invest in child protection and substance abuse partnerships for families, we can achieve two things. For many families, I hope that parents will achieve sobriety through treatment and that their children will return to a safe and stable home. For those who are unsuccessful, we will know that we have put forth a reasonable, good faith effort and learned an important lesson—that some children need alternate homes, and that we will still need to pursue adoption for some children. Under the Adoption and Safe Families Act, courts cannot move forward on adoption until appropriate services have been provided to families. That is the law, and we need to follow it.

Our bill will promote a responsible approach with a focus on accountability. It requires annual progress reports that detail defined outcomes, challenges, and proposed solutions. These reports will evaluate parental treatment outcomes, the child's safety, and the stability of the family.

Throughout the years, I have worked to address the needs of abused and neglected children in a bipartisan matter. I am proud to continue this bipartisan approach as we come to grips with such a controversial and emotionally charged issue as protecting children who are abused and neglected by their substance-abusing parents.

By Mr. HOLLINGS (for himself and Mr. MCCAIN):

S. 485. A bill to amend Federal law regarding the tolling of the Interstate Highway System; to the Committee on Environment and Public Works.

Mr. HOLLINGS. Mr. President, I rise to bring to your attention an issue of great national concern. We all remember the great debate that this chamber had last year during reauthorization of the federal highway bill, TEA–21. We all negotiated to get more funds for our states because we know that more investment in our highways means better, safer, and more efficient transportation for those who reply on roads for making deliveries, going to work or school, or just doing the grocery shopping. Transportation is the linchpin for economic development, and those states that have good, efficient transportation systems attract business development, ultimately raising standards of living. However, I think that we may have gone too far in authorizing states additional means to raise revenue for highway improvements. These means to raise revenue are not productive and hurt our system of transportation.

Specifically, I am concerned that states have too much flexibility to establish tolls on our Interstate highway system. For many states, the large increases in TEA–21 funding have satisfied the need to invest in infrastructure. Other states have found that they need to raise more money, and so they have raised their state fuel taxes or taken other actions to raise the needed revenue. These increases may be difficult to implement politically, because frankly most people don't support any tax increase. However, I believe that highway tolls are a non-productive and overly intrusive means of raising revenue causing more harm to commerce than can be justified.

Congress, mistakenly in my opinion, increased the authority of states to put tolls on their Interstate highway in TEA–21. I am introducing the interstate Tolls Relief Act of 2001 to restrict Interstate toll authority. The debate over highway tolls goes back to the genesis of our Republic, and contributed to our movement away from the Articles of Confederation to a more uniform system of governance under the U.S. Constitution. Toll roads were the bane of commerce, in the early years of the Republic, as each state would attempt to toll the interstate traveling public to finance state public improvements. Ultimately, frustration with delay and uneven costs helped contribute to the adoption of Commerce Clause powers to help facilitate interstate and foreign trade. Those same concerns hold true today, and I think that we in Congress must take a national perspective and promote interstate commerce.

I think that if one were to ask the citizens of the United States about tolls, they would ultimately conclude that Interstate tolls would reduce by efficiency of our Interstate highways, increase shipping costs, and make interstate travel more expensive and less convenient. Not to mention the safety problems associated with erecting toll booths and operating them to collect revenues.

Now, I recognize that tolls under certain circumstances may be a good idea, and my bill does not prevent states from tolling non-Interstate highways. My bill also does not affect tolls on highways where they are already in use, and states will continue to be able to rely on existing tolls for revenues. Furthermore, my bill recognizes that when funds must be found for a major Interstate bridge or tunnel project, states may have no other option but to use tolls to finance the project. They may continue to do so under my bill. I believe this consistent with the original intent of authority granted for Interstate tolls. What my bill does is to prevent the proliferation of Interstate tolls, and restrict tolling authority for major bridges and tunnels.

This bill is essential if we are to continue to have an Interstate Highway System that is safe and facilitates the efficient movement of Interstate commerce and personal travel. I urge the support of my colleagues.

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

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

S. 485

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 ''Interstate Tolls Relief Act of 2001''.

SEC. 2. INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM REPEALED.

Section 1216(b) of the Transportation Equity Act for the 21st Century (112 Stat. 212-214; 23 U.S.C. 19 nt) is repealed.

SEC. 3. TOLLS ON BRIDGES AND TUNNELS.

Section 129(a)(1)(C) of title 23, United States Code, is amended by striking ''toll-free bridge or tunnel'' and inserting ''toll-free major bridge or toll-free tunnel''.

SEC. 4. LIMITATION ON USE OF TOLL REVENUES.

Section 129(a)(3) of title 23, United States Code, is amended by—

(1) striking ''first'' in the first sentence and inserting ''only''; and

(2) striking ''If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.''.

By Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. FEINGOLD, Mr. JEFFORDS, Mr. KENNEDY, Mr. CHAFEE, Mr. AKAKA, Ms. MIKULSKI, Mr. DODD, Mr. LIEBERMAN, Mr. TORRICELLI, Mr. WELLSTONE, Mrs. BOXER, and Mr. CORZINE):

S. 486. A bill to reduce the risk that innocent persons may be executed, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, a little over one year ago, I came to this floor to draw attention to the growing crisis in the administration of capital punishment. I noted the startling number of cases, 85, in which death row inmates had been exonerated after long stays in prison. In some of those cases, the inmate had come within days of being executed.

A lot has happened in a year. For one thing, a lot more death row inmates have been exonerated. The number jumped in a single year from 85 all the way to 95. There are now 95 people in 22 States who have been cleared of the crime that sent them to death row, according to the Death Penalty Information Center. The appalling number of exonerations, and the fact that they span so many States, a substantial majority of the States that have the death penalty, makes it clearer than ever that the crisis I spoke of last year is real, and that it is national in its scope. This is not an ''Illinois problem'' or a ''Texas problem.'' Nor, with Earl Washington's release last month from prison, is it a ''Virginia problem.'' There are death penalty problems across the nation, and as a nation we need to pay attention to what is happening.

It seems like every time you pick up a paper these days, there is another story about another person who was sentenced to death for a crime that he did not commit. The most horrifying miscarriages of justice are becoming commonplace: ''Yet Another Innocent Person Cleared By DNA, Walks Off Death Row,'' story on page 10. We should never forget that behind each of these headlines is a person whose life was completely shattered and nearly extinguished by a wrongful conviction.

And those were the ''lucky'' ones. We simply do not know how many innocent people remain on death row, and how many may already have been executed.

People of good conscience can and will disagree on the morality of the death penalty. I have always opposed it. I did when I was a prosecutor, and I do today. But no matter what you believe about the death penalty, no one wants to see innocent people sentenced to death. It is completely unacceptable.

A year ago, along with several of my colleagues, I introduced the Innocence Protection Act of 2000. I hoped this bill would stimulate a national debate and begin work on national reforms on what is, as I said, a national problem. A year later, the national debate is well under way, but the need for real, concrete reforms is more urgent than ever.

Today, my friend GORDON SMITH and I are introducing the Innocence Protection Act of 2001. We are joined by Senators from both sides of the aisle, by some who support capital punishment and by others who oppose it. On the Republican side, I want to thank Senators SUSAN COLLINS and LINCOLN CHAFEE, and my fellow Vermonter JIM JEFFORDS. On the Democratic side, my thanks to Senators LEVIN, FEINGOLD, KENNEDY, AKAKA, MIKULSKI, DODD, LIEBERMAN, TORRICELLI, WELLSTONE, BOXER and CORZINE. I also want to thank our House sponsors WILLIAM DELAHUNT, and RAY LAHOOD, along with their 117 additional cosponsors, both Democratic and Republican.

Over the last year we have turned the corner in showing that the death process is broken. Now we will push forward to our goal of acting on reforms that address these problems.

Here on Capitol Hill it is our job to represent the public. The scores of legislators who have sponsored this legislation clearly do represent the American public, both in their diversity and in their readiness to work together in a bipartisan manner for common-sense solutions.

Too often in this chamber, we find ourselves dividing along party or ideological lines. The Innocence Protection Act is not about that, and it is not about whether, in the abstract, you favor or disfavor the death penalty. It is about what kind of society we want America to be in the 21st Century.

The goal of our bill is simple, but profoundly important: to reduce the risk of mistaken executions. The Innocence Protection Act proposes basic, common-sense reforms to our criminal justice system that are designed to protect the innocent and to ensure that if the death penalty is imposed, it is the result of informed and reasoned deliberation, not politics, luck, bias, or guesswork. We have listened to a lot of good advice and made some refinements to the bill since the last Congress, but it is still structured around

two principal reforms: improving the availability of DNA testing, and ensuring reasonable minimum standards and funding for court-appointed counsel.

The need to make DNA testing more available is obvious. DNA is the fingerpint of the 21st Century. Prosecutors across the country use it, and rightly so, to prove guilt. By the same token, it should be used to do what it is equally scientifically reliable to do, prove innocence. Our bill would provide broader access to DNA testing by convicted offenders. It would also prevent the premature destruction of biological evidence that could hold the key to clearing an innocent person or identifying the real culprit.

I am gratified that our bill has served as a catalyst for reforms in the States with respect to post-conviction DNA testing. In just one year, several States have passed some form of DNA legislation. Others have DNA bills under consideration. Much of this legislation is modeled on the DNA provisions proposed in the Innocence Protection Act, and we can be proud about this.

But there are still many States that have not moved on this issue, even though it has been more than six years since New York passed the Nation's first post-conviction DNA statute. And some of the States that have acted have done so in ways that will leave the vast majority of prisoners without access to DNA testing. Moreover, none of these new laws addresses the larger and more urgent problem of ensuring that people facing the death penalty have adequate legal representation. The Innocence Protection Act does address this problem.

In our adversarial system of justice, effective assistance of counsel is essential to the fair administration of justice. Unfortunately, the manner in which defense lawyers are selected and compensated in death penalty cases too often results in fundamental unfairness and unreliable verdicts. More than two-thirds of all death sentences are overturned on appeal or after post-conviction review because of errors in the trial; such errors are minimized when the defendant has a competent counsel.

It is a sobering fact that in some areas of the Nation it is often better to be rich and guilty than poor and innocent. All too often, lawyers defending people whose lives are at stake are inexperienced, inept, or just plain incompetent. All too often, they fail to take the time to review the evidence and understand the basic facts of the case before the trial is under way.

The reasons for this inadequacy of representation are well know: lack of standards for choosing defense counsel, and lack of funding for this type of legal service. The Innocence Protection Act addresses these problems head on. It calls for the creation of a temporary Commission on Capital Representation, which would consist of distinguished American legal experts who have experienced the criminal justice system first hand, prosecutors, defense lawyers, and judges. The Commission would be tasked with formulating standards that specify the elements of an effective system for providing adequate representation in capital cases. The bill also authorizes more than $50,000,000 in grants to help put the new standards into effect.

We have consulted a great many legal experts in the course of formulating these provisions. They have all provided valuable insights, but as a former prosecutor myself, I have been particularly pleased with the encouragement and assistance we have received from prosecutors across the nation.

Good prosecutors have two things in common. First, good prosecutors want to convict the person, not to get a conviction that may be a mistake, and that may leave the real culprit in the clear. Second, good prosecutors want defendants to be represented by good defense lawyers. Lawyers who investigate their client's cases thoroughly before trial, and represent their clients vigorously in court, are essential in getting at the truth in our adversarial system.

Given some leadership from the people's representatives in Congress, some fair and objective standards, and some funding, America's prosecutors will be ready, willing and able to help fix the system. We owe them, and the American people, that leadership.

On August 3, 1995, more than five years ago, the Conference of Chief Justices urged the judicial leadership in each State in which the death penalty is authorized by law to ''establish standards and a process that will assure the timely appointment of competent counsel, with adequate resources, to represent defendants in capital cases at each stage of such proceedings.'' The States' top jurists, the people who run our justice system, called for reform. But not much came of their initiative. Although a few States have established effective standards and sound administrative systems for the appointment and compensation of counsel in capital cases, most have not. The do-nothing politics of gridlock got in the way of sensible, consensus-based reform.

We have made a commitment to the American people to do better than that. At the end of the last Congress, members on both sides of the aisle joined together to pass the Paul Coverdell National Forensic Sciences Improvement Act and the DNA Analysis Backlog Elimination Act. I strongly supported both bills, which will give States the help they desperately need to reduce the backlogs of untested DNA evidence in their crime labs, and to improve the quality and capacity of these facilities. Both bills passed unanimously in both houses. And in both bills, all of us here in Congress committed ourselves to working with the States to ensure access to post-conviction DNA testing in appropriate cases, and to improve the quality of legal representation in capital cases through the establishment of counsel standards. Congress has already gone on record in recognizing what has to be done. Now it is time to actually do it.

If we had a series of close calls in airline traffic, we would be rushing to fix the problem. These close calls on death row should concentrate our minds, and focus our will, to act.

This new Congress is, as our new President has said, a time for leadership. It is a time for fulfilling the commitments we have made to the American people. And it is a time for action. The Innocence Protection Act is a bipartisan effort to move beyond the politics of gridlock. By passing it, we can work cooperatively with the States to ensure that defendants who are put on trial for their lives have competent legal representation at every stage of their cases. By passing it, we can send a message about the values of fundamental justice that unite all Americans. And by passing it, we can substantially reduce the risk of executing innocent people. We have had a constructive debate, and we have made a noble commitment. It is now time to act.

I ask unanimous consent that the text of the bill and a summary of the bill be included in the RECORD.

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

S. 486

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 ''Innocence Protection Act of 2001''.

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

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

SEC. 101. FINDINGS AND PURPOSES.

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

(1) Over the past decade, deoxyribonucleic acid testing (referred to in this section as ''DNA testing'') has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene.

(2) Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact.

(3) While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, in some cases convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.

(4) Since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post-conviction exoneration of innocent men and women.

(5) In more than 80 cases in the United States, DNA evidence has led to the exoneration of innocent men and women who were wrongfully convicted. This number includes at least 10 individuals sentenced to death, some of whom came within days of being executed.

(6) In more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the identification of the actual perpetrator.

(7) Experience has shown that it is not unduly burdensome to make DNA testing available to inmates. The cost of that testing is relatively modest and has decreased in recent years. Moreover, the number of cases in which post-conviction DNA testing is appropriate is small, and will decrease as pretrial testing becomes more common.

(8) Under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence. Under Federal law, motions for a new trial based on newly discovered evidence must be made within 3 years after conviction. In most States, those motions must be made not later than 2 years after conviction, and sometimes much sooner. The result is that laws intended to prevent the use of evidence that has become less reliable over time have been used to preclude the use of DNA evidence that remains highly reliable even decades after trial.

(9) The National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude that testing, and notwithstanding the inability of an inmate to pay for the testing.

(10) Since New York passed the Nation's first post-conviction DNA statute in 1994, only a few States have adopted post-conviction DNA testing procedures, and some of these procedures are unduly restrictive. Moreover, only a handful of States have passed legislation requiring that biological evidence be adequately preserved.

(11) In 1994, Congress passed the DNA Identification Act, which authorized the construction of the Combined DNA Index System, a national database to facilitate law enforcement exchange of DNA identification information, and authorized funding to improve the quality and availability of DNA testing for law enforcement identification purposes. In 2000, Congress passed the DNA Analysis Backlog Elimination Act and the Paul Coverdell Forensic Sciences Improvement Act, which together authorized an additional $908,000,000 over 6 years in DNA-related grants.

(12) Congress should continue to provide financial assistance to the States to increase the capacity of State and local laboratories to carry out DNA testing for law enforcement identification purposes. At the same time, Congress should insist that States which accept financial assistance make DNA testing available to both sides of the adversarial system in order to enhance the reliability and integrity of that system.

(13) In Herrera v. Collins, 506 U.S. 390 (1993), a majority of the members of the Court suggested that a persuasive showing of innocence made after trial would render the execution of an inmate unconstitutional.

(14) It shocks the conscience and offends social standards of fairness and decency to execute innocent persons or to deny inmates the opportunity to present persuasive evidence of their innocence.

(15) If biological material is not subjected to DNA testing in appropriate cases, there is a significant risk that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally executed.

(16) Given the irremediable constitutional harm that would result from the execution of an innocent person and the failure of many States to ensure that innocent persons are not sentenced to death, a Federal statute assuring the availability of DNA testing and a chance to present the results of testing in court is a congruent and proportional prophylactic measure to prevent constitutional injuries from occurring.

(b) PURPOSES.—The purposes of this title are to—

(1) substantially implement the Recommendations of the National Commission on the Future of DNA Evidence in the Federal criminal justice system, by authorizing DNA testing in appropriate cases;

(2) prevent the imposition of unconstitutional punishments through the exercise of power granted by clause 1 of section 8 and clause 2 of section 9 of article I of the Constitution of the United States and section 5 of the 14th amendment to the Constitution of the United States; and

(3) ensure that wrongfully convicted persons have an opportunity to establish their innocence through DNA testing, by requiring the preservation of DNA evidence for a limited period.

SEC. 102. POST-CONVICTION DNA TESTING IN FEDERAL CRIMINAL JUSTICE SYSTEM.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by inserting after chapter 155 the following:

''CHAPTER 156—DNA TESTING

''§ 2291. DNA testing

''(a) APPLICATION.—Notwithstanding any other provision of law, a person convicted of a Federal crime may apply to the appropriate Federal court for DNA testing to support a claim that the person did not commit—

''(1) the Federal crime of which the person was convicted; or

''(2) any other offense that a sentencing authority may have relied upon when it sentenced the person with respect to the Federal crime either to death or to an enhanced term of imprisonment as a career offender or armed career criminal.

''(b) NOTICE TO GOVERNMENT.—The court shall notify the Government of an application made under subsection (a) and shall afford the Government an opportunity to respond.

''(c) PRESERVATION ORDER.—The court shall order that all evidence secured in relation to the case that could be subjected to DNA testing must be preserved during the pendency of the proceeding. The court may impose appropriate sanctions, including criminal contempt, for the intentional destruction of evidence after such an order.

''(d) ORDER.—

''(1) IN GENERAL.—The court shall order DNA testing pursuant to an application made under subsection (a) upon a determination that—

''(A) the evidence is still in existence, and in such a condition that DNA testing may be conducted;

''(B) the evidence was never previously subjected to DNA testing, or was not subject to the type of DNA testing that is now requested and that may resolve an issue not resolved by previous testing;

''(C) the proposed DNA testing uses a scientifically valid technique; and

''(D) the proposed DNA testing has the scientific potential to produce new, noncumulative evidence material to the claim of the applicant that the applicant did not commit—

''(i) the Federal crime of which the applicant was convicted; or

''(ii) any other offense that a sentencing authority may have relied upon when it sentenced the applicant with respect to the Federal crime either to death or to an enhanced term of imprisonment as a career offender or armed career criminal.

''(2) LIMITATION.—The court shall not order DNA testing under paragraph (1) if the Government proves by a preponderance of the evidence that the application for testing was made to unreasonably delay the execution of sentence or administration of justice, rather than to support a claim described in paragraph (1)(D).

''(3) TESTING PROCEDURES.—If the court orders DNA testing under paragraph (1), the court shall impose reasonable conditions on such testing designed to protect the integrity of the evidence and the testing process and the reliability of the test results.

''(e) COST.—The cost of DNA testing ordered under subsection (c) shall be borne by the Government or the applicant, as the court may order in the interests of justice, except that an applicant shall not be denied testing because of an inability to pay the cost of testing.

''(f) COUNSEL.—The court may at any time appoint counsel for an indigent applicant under this section pursuant to section 3006A(a)(2)(B) of title 18.

''(g) POST-TESTING PROCEDURES.—

''(1) INCONCLUSIVE RESULTS.—If the results of DNA testing conducted under this section

are inconclusive, the court may order such further testing as may be appropriate or dismiss the application.

''(2) RESULTS UNFAVORABLE TO APPLICANT.—If the results of DNA testing conducted under this section inculpate the applicant, the court shall—

''(A) dismiss the application;

''(B) assess the applicant for the cost of the testing; and

''(C) make such further orders as may be appropriate.

''(3) RESULTS FAVORABLE TO APPLICANT.—If the results of DNA testing conducted under this section are favorable to the applicant, the court shall order a hearing and thereafter make such further orders as may be appropriate under applicable rules and statutes regarding post-conviction proceedings, notwithstanding any provision of law that would bar such hearing or orders as untimely.

''(h) RULES OF CONSTRUCTION.—

''(1) OTHER POST-CONVICTION RELIEF UNAFFECTED.—Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of law.

''(2) FINALITY RULE UNAFFECTED.—An application under this section shall not be considered a motion under section 2255 for purposes of determining whether it or any other motion is a second or successive motion under section 2255.

''(i) DEFINITIONS.—In this section:

''(1) APPROPRIATE FEDERAL COURT.—The term 'appropriate Federal court' means—

''(A) the United States District Court which imposed the sentence from which the applicant seeks relief; or

''(B) in relation to a crime under the Uniform Code of Military Justice, the United States District Court having jurisdiction over the place where the court martial was convened that imposed the sentence from which the applicant seeks relief, or the United States District Court for the District of Columbia, if no United States District Court has jurisdiction over the place where the court martial was convened.

''(2) FEDERAL CRIME.—The term 'Federal crime' includes a crime under the Uniform Code of Military Justice.

''§ 2292. Preservation of evidence

''(a) IN GENERAL.—Notwithstanding any other provision of law and subject to subsection (b), the Government shall preserve all evidence that was secured in relation to the investigation or prosecution of a Federal crime (as that term is defined in section 2291(i)), and that could be subjected to DNA testing, for not less than the period of time that any person remains subject to incarceration in connection with the investigation or prosecution.

''(b) EXCEPTIONS.—The Government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

''(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

''(2)(A)(i) the Government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the public defender for the judicial district in which the conviction for such person was imposed), of the intention of the Government to dispose of the evidence and the provisions of this chapter; and

''(ii) the Government affords such person not less than 180 days after such notification to make an application under section 2291(a) for DNA testing of the evidence; or

''(B)(i) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

''(ii) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.

''(c) REMEDIES FOR NONCOMPLIANCE.—

''(1) GENERAL LIMITATION.—Nothing in this section shall be construed to give rise to a claim for damages against the United States, or any employee of the United States, any court official or officer of the court, or any entity contracting with the United States.

''(2) CIVIL PENALTY.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), an individual who knowingly violates a provision of this section or a regulation prescribed under this section shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for the first violation and $5,000 for each subsequent violation, except that the total amount imposed on the individual for all such violations during a calendar year may not exceed $25,000.

''(B) PROCEDURES.—The provisions of section 405 of the Controlled Substances Act (21 U.S.C. 844a) (other than subsections (a) through (d) and subsection (j)) shall apply to the imposition of a civil penalty under subparagraph (A) in the same manner as such provisions apply to the imposition of a penalty under section 405.

''(C) PRIOR CONVICTION.—A civil penalty may not be assessed under subparagraph (A) with respect to an act if that act previously resulted in a conviction under chapter 73 of title 18.

''(3) REGULATIONS.—

''(A) IN GENERAL.—The Attorney General shall promulgate regulations to implement and enforce this section.

''(B) CONTENTS.—The regulations shall include the following:

''(i) Disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who knowingly or repeatedly violate a provision of this section.

''(ii) An administrative procedure through which parties can file formal complaints with the Department of Justice alleging violations of this section.''.

(b) CRIMINAL PENALTY.—Chapter 73 of title 18, United States Code, is amended by inserting at the end the following:

''§ 1519. Destruction or altering of DNA Evidence.

Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence that is required to be preserved under section 2292 of title 28, United States Code, with intent to—

(1) impair the integrity of that evidence;

(2) prevent that evidence from being subjected to DNA testing; or

(3) prevent the production or use of that evidence in an official proceeding,

shall be fined under this title or imprisoned not more than 5 years, or both.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The analysis for part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 155 the following:

''156. DNA testing ..... 2291''.

(2) The table of contents for Chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1518 the following:

''1519. Destruction or altering of DNA Evidence.''.

SEC. 103. POST-CONVICTION DNA TESTING IN STATE CRIMINAL JUSTICE SYSTEMS.

(a) CERTIFICATION REGARDING POST-CONVICTION TESTING AND PRESERVATION OF DNA EVIDENCE.—If any part of funds received from a grant made under a program listed in subsection (b) is to be used to develop or improve a DNA analysis capability in a forensic laboratory, or to collect, analyze, or index DNA samples for law enforcement identification purposes, the State applying for that grant must certify that it will—

(1) make post-conviction DNA testing available to any person convicted of a State crime in a manner consistent with section 2291 of title 28, United States Code, and, if the results of such testing are favorable to such person, allow such person to apply for post-conviction relief, notwithstanding any provision of law that would bar such application as untimely; and

(2) preserve all evidence that was secured in relation to the investigation or prosecution of a State crime, and that could be subjected to DNA testing, for not less than the period of time that such evidence would be required to be preserved under section 2292 of title 28, United States Code, if the evidence were related to a Federal crime.

(b) PROGRAMS AFFECTED.—The certification requirement established by subsection (a) shall apply with respect to grants made under the following programs:

(1) DNA ANALYSIS BACKLOG ELIMINATION GRANTS.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (Public Law 106–546).

(2) PAUL COVERDELL NATIONAL FORENSIC SCIENCES IMPROVEMENT GRANTS.—Part BB of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as added by Public Law 106–561).

(3) DNA IDENTIFICATION GRANTS.—Part X of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk et seq.).

(4) DRUG CONTROL AND SYSTEM IMPROVEMENT GRANTS.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751 et seq.).

(5) PUBLIC SAFETY AND COMMUNITY POLICING GRANTS.—Part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

(c) EFFECTIVE DATE.—This section shall apply with respect to any grant made on or after the date that is 1 year after the date of enactment of this Act.

SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE 14TH AMENDMENT.

(a) APPLICATION FOR DNA TESTING.—No State shall deny an application for DNA testing made by a prisoner in State custody who is under sentence of death, if the proposed DNA testing has the scientific potential to produce new, noncumulative evidence material to the claim of the prisoner that the prisoner did not commit—

(1) the offense for which the prisoner was sentenced to death; or

(2) any other offense that a sentencing authority may have relied upon when it sentenced the prisoner to death.

(b) OPPORTUNITY TO PRESENT RESULTS OF DNA TESTING.—No State shall rely upon a time limit or procedural default rule to deny a prisoner in State custody who is under sentence of death an opportunity to present in an appropriate State court new, noncumulative DNA results that establish a reasonable probability that the prisoner did not commit an offense described in subsection (a).

(c) REMEDY.—A prisoner in State custody who is under sentence of death may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in

a district court of the United States, naming an executive or judicial officer of the State as defendant.

(d) FINALITY RULE UNAFFECTED.—An application under this section shall not be considered an application for a writ of habeas corpus under section 2254 of title 28, United States Code, for purposes of determining whether it or any other application is a second or successive application under section 2254.

SEC. 105. GRANTS TO PROSECUTORS FOR DNA TESTING PROGRAMS.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended by—

(1) striking ''and'' at the end of paragraph (25);

(2) striking the period at the end of paragraph (26) and inserting ''; and''; and

(3) adding at the end the following:

''(27) prosecutor-initiated programs to conduct a systematic review of convictions to identify cases in which DNA testing is appropriate and to offer DNA testing to inmates in such cases.''.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

SEC. 201. NATIONAL COMMISSION ON CAPITAL REPRESENTATION.

(a) ESTABLISHMENT.—There is established the National Commission on Capital Representation (referred to in this section as the ''Commission'').

(b) DUTIES.—The Commission shall—

(1) survey existing and proposed systems for appointing counsel in capital cases, and the amounts actually paid by governmental entities for capital defense services; and

(2) formulate standards specifying the elements of an effective system for providing adequate representation, including counsel and investigative, expert, and other services necessary for adequate representation, to—

(A) indigents charged with offenses for which capital punishment is sought;

(B) indigents who have been sentenced to death and who seek appellate or collateral review in State court; and

(C) indigents who have been sentenced to death and who seek certiorari review in the Supreme Court of the United States.

(c) ELEMENTS.—The elements of an effective system described in subsection (b)(2) shall include—

(1) a centralized and independent appointing authority, which shall—

(A) recruit attorneys who are qualified to be appointed in the proceedings specified in subsection (b)(2);

(B) draft and annually publish a roster of qualified attorneys;

(C) draft and annually publish qualifications and performance standards that attorneys must satisfy to be listed on the roster and procedures by which qualified attorneys are identified;

(D) periodically review the roster, monitor the performance of all attorneys appointed, provide a mechanism by which members of the relevant State Bar may comment on the performance of their peers, and delete the name of any attorney who fails to satisfactorily complete regular training programs on the representation of clients in capital cases, fails to meet performance standards in a case to which the attorney is appointed, or otherwise fails to demonstrate continuing competence to represent clients in capital cases;

(E) conduct or sponsor specialized training programs for attorneys representing clients in capital cases;

(F) appoint lead counsel and co-counsel from the roster to represent a client in a capital case promptly upon receiving notice of the need for an appointment from the relevant State court; and

(G) report the appointment, or the failure of the client to accept such appointment, to the court requesting the appointment;

(2) adequate compensation of private attorneys for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases;

(3) reimbursement of private attorneys and public defender organizations for attorney expenses reasonably incurred in the representation of a client in a capital case; and

(4) reimbursement of private attorneys and public defender organizations for the reasonable costs of law clerks, paralegals, investigators, experts, scientific tests, and other support services necessary in the representation of a client in a capital case.

(d) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members, as follows:

(A) Four members appointed by the President on the basis of their expertise and eminence within the field of criminal justice, 2 of whom have 10 years or more experience in representing defendants in State capital proceedings, including trial, direct appeal, or post-conviction proceedings, and 2 of whom have 10 years or more experience in prosecuting defendants in such proceedings.

(B) Two members appointed by the Conference of Chief Justices, from among the members of the judiciaries of the several States.

(C) Two members appointed by the Chief Justice of the United States, from among the members of the Federal Judiciary.

(D) The Chairman of the Committee on Defender Services of the Judicial Conference of the United States, or a designee of the Chairman.

(2) EX OFFICIO MEMBER.—The Executive Director of the State Justice Institute, or a designee of the Executive Director, shall serve as an ex officio nonvoting member of the Commission.

(3) POLITICAL AFFILIATION.—Not more than 2 members appointed under paragraph (1)(A) may be of the same political party.

(4) GEOGRAPHIC DISTRIBUTION.—The appointment of individuals under paragraph (1) shall, to the maximum extent practicable, be made so as to ensure that different geographic areas of the United States are represented in the membership of the Commission.

(5) TERMS.—Members of the Commission appointed under subparagraphs (A), (B), and (C) of paragraph (1) shall be appointed for the life of the Commission.

(6) DEADLINE FOR APPOINTMENTS.—All appointments to the Commission shall be made not later than 45 days after the date of enactment of this Act.

(7) VACANCIES.—A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(8) NO COMPENSATION.—Members of the Commission shall serve without compensation for their service.

(9) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(10) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(11) INITIAL MEETING.—The initial meeting of the Commission shall occur not later than 30 days after the date on which all initial members of the Commission have been appointed.

(12) CHAIRPERSON.—At the initial meeting of the Commission, a majority of the members of the Commission present and voting shall elect a Chairperson from among the members of the Commission appointed under paragraph (1).

(e) STAFF.—

(1) IN GENERAL.—The Commission may appoint and fix the pay of such personnel as the Commission considers appropriate.

(2) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) POWERS.—

(1) INFORMATION-GATHERING ACTIVITIES.—The Commission may, for the purpose of carrying out this section, hold hearings, receive public comment and testimony, initiate surveys, and undertake such other activities to gather information as the Commission may find advisable.

(2) OBTAINING OFFICIAL INFORMATION.—The Commission may secure directly from any department or agency of the United States such information as the Commission considers necessary to carry out this section. Upon request of the chairperson of the Commission, the head of that department or agency shall provide such information, except to the extent prohibited by law.

(3) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(4) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(g) REPORT.—

(1) IN GENERAL.—The Commission shall submit a report to the President and the Congress before the end of the 1-year period beginning after the first meeting of all members of the Commission.

(2) CONTENTS.—The report submitted under paragraph (1) shall contain—

(A) a comparative analysis of existing and proposed systems for appointing counsel in capital cases, and the amounts actually paid by governmental entities for capital defense services; and

(B) such standards as are formulated by the Commission pursuant to subsection (b)(2), together with such commentary and recommendations as the Commission considers appropriate.

(h) TERMINATION.—The Commission shall terminate 90 days after submitting the report under subsection (g).

(i) EXPENSES OF COMMISSION.—There are authorized to be appropriated to pay any expenses of the Commission such sums as may be necessary not to exceed $1,000,000. Any sums appropriated for such purposes are authorized to remain available until expended, or until the termination of the Commission pursuant to subsection (h), whichever occurs first.

SEC. 202. CAPITAL DEFENSE INCENTIVE GRANTS.

The State Justice Institute Act of 1984 (42 U.S.C. 10701 et seq.) is amended by inserting after section 207 the following:

''SEC. 207A. CAPITAL DEFENSE INCENTIVE GRANTS.

''(a) PROGRAM AUTHORIZED.—The State Justice Institute (referred to in this section as the 'Institute') may make grants to State agencies and organizations responsible for the administration of standards of legal competence for counsel in capital cases, for the purposes of—

''(1) implementing new mechanisms or supporting existing mechanisms for providing representation in capital cases that comply with the standards promulgated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001; and

''(2) otherwise improving the quality of legal representation in capital cases.

''(b) USE OF FUNDS.—Funds made available under this section may be used for any purpose that the Institute determines is likely to achieve the purposes described in subsection (a), including—

''(1) training and development of training capacity to ensure that attorneys assigned to capital cases meet such standards;

''(2) augmentation of attorney, paralegal, investigator, expert witness, and other staff and services necessary for capital defense; and

''(3) development of new mechanisms for addressing complaints about attorney competence and performance in capital cases.

''(c) APPLICATIONS.—

''(1) IN GENERAL.—No grant may be made under this section unless an application has been submitted to, and approved by, the Institute.

''(2) APPLICATION.—An application for a grant under this section shall be submitted in such form, and contain such information, as the Institute may prescribe by regulation or guideline.

''(3) CONTENTS.—In accordance with the regulations or guidelines established by the Institute, each application for a grant under this section shall—

''(A) include a long-term strategy and detailed implementation program that reflects consultation with the organized bar of the State, the highest court of the State, and the Attorney General of the State, and reflects consideration of a statewide strategy; and

''(B) specify plans for obtaining necessary support and continuing the proposed program following the termination of Federal support.

''(d) RULES AND REGULATIONS.—The Institute may issue rules, regulations, guidelines, and instructions, as necessary, to carry out the purposes of this section.

''(e) TECHNICAL ASSISTANCE AND TRAINING.—To assist and measure the effectiveness and performance of programs funded under this section, the Institute may provide technical assistance and training, as required.

''(f) GRANT PERIOD.—A grant under this section shall be made for a period not longer than 3 years, but may be renewed on such terms as the Institute may require.

''(g) LIMITATIONS ON USE OF FUNDS.—

''(1) NONSUPPLANTING REQUIREMENT.—Funds made available under this section shall not be used to supplant State or local funds, but shall be used to supplement the amount of funds that would, in the absence of Federal funds received under this section, be made available from States or local sources.

''(2) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed—

''(A) for the first fiscal year for which a program receives assistance, 75 percent of the total costs of such program; and

''(B) for subsequent fiscal years for which a program receives assistance, 50 percent of the total costs of such program.

''(3) ADMINISTRATIVE COSTS.—A State agency or organization may not use more than 5 percent of the funds it receives from this section for administrative expenses, including expenses incurred in preparing reports under subsection (h).

''(h) REPORT.—Each State agency or organization that receives a grant under this section shall submit to the Institute, at such times and in such format as the Institute may require, a report that contains—

''(1) a summary of the activities carried out under the grant and an assessment of the effectiveness of such activities in achieving ongoing compliance with the standards formulated pursuant to section 201(b) of the Innocence Protection Act of 2001 and improving the quality of representation in capital cases; and

''(2) such other information as the Institute may require.

''(i) REPORT TO CONGRESS.—Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Institute shall submit to Congress a report that includes—

''(1) the aggregate amount of grants made under this part to each State agency or organization for such fiscal year;

''(2) a summary of the information provided in compliance with subsection (h); and

''(3) an independent evaluation of the effectiveness of the programs that received funding under this section in achieving ongoing compliance with the standards formulated pursuant to section 201(b) of the Innocence Protection Act of 2001 and improving the quality of representation in capital cases.

''(j) DEFINITIONS.—In this section—

''(1) the term 'capital case'—

''(A) means any criminal case in which a defendant prosecuted in a State court is subject to a sentence of death or in which a death sentence has been imposed; and

''(B) includes all proceedings filed in connection with the case, up to and including direct appellate review and post-conviction review in State court; and

''(2) the term 'representation' includes counsel and investigative, expert, and other services necessary for adequate representation.

''(k) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, in addition to other amounts authorized by this Act, to remain available until expended, $50,000,000 for fiscal year 2002, and such sums as may be necessary for fiscal years 2003 and 2004.

''(2) TECHNICAL ASSISTANCE AND TRAINING.—Not more than 3 percent of the amount made available under paragraph (1) for a fiscal year shall be available for technical assistance and training activities by the Institute under subsection (e).

''(3) EVALUATIONS.—Up to 5 percent of the amount authorized to be appropriated under paragraph (1) in any fiscal year may be used for administrative expenses, including expenses incurred in preparing reports under subsection (i).''.

SEC. 203. AMENDMENTS TO PRISON GRANT PROGRAMS.

(a) IN GENERAL.—Subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13701 et seq.) is amended by adding at the end the following:

''SEC. 20110. STANDARDS FOR CAPITAL REPRESENTATION.

''(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE WITH STANDARDS FOR CAPITAL REPRESENTATION.—

''(1) IN GENERAL.—The Attorney General shall withhold a portion of any grant funds awarded to a State or unit of local government under this subtitle on the first day of each fiscal year after the second fiscal year beginning after September 30, 2001, if such State, or the State to which such unit of local government appertains—

''(A) prescribes, authorizes, or permits the penalty of death for any offense, and sought, imposed, or administered such penalty at any time during the preceding 5 fiscal years; and

''(B) has not established or does not maintain an effective system for providing adequate representation for indigent persons in capital cases, in compliance with the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

''(2) WITHHOLDING FORMULA.—The amount to be withheld under paragraph (1) shall be, in the first fiscal year that a State is not in compliance, 10 percent of any grant funds awarded under this subtitle to such State and any unit of local government appertaining thereto, and shall increase by 10 percent for each year of noncompliance thereafter, up to a maximum of 60 percent.

''(3) DISPOSITION OF WITHHELD FUNDS.—Funds withheld under this subsection from apportionment to any State or unit of local government shall be allotted by the Attorney General and paid to the States and units of local government receiving a grant under this subtitle, other than any State referred to in paragraph (1), and any unit of local government appertaining thereto, in a manner equivalent to the manner in which the allotment under this subtitle was determined.

''(b) WAIVER OF WITHHOLDING REQUIREMENT.—

''(1) IN GENERAL.—The Attorney General may waive in whole or in part the application of the requirement of subsection (a) for any 1-year period with respect to any State, where immediately preceding such 1-year period the Attorney General finds that such State has made and continues to make a good faith effort to comply with the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

''(2) LIMITATION ON WAIVER AUTHORITY.—The Attorney General may not grant a waiver under paragraph (1) with respect to any State for 2 consecutive 1-year periods.

''(3) LIMITATION ON USE OF FUNDS.—If the Attorney General grants a waiver under paragraph (1), the State shall be required to use the total amount of grant funds awarded to such State or any unit of local government appertaining thereto under this subtitle that would have been withheld under subsection (a) but for the waiver to improve the capability of such State to provide adequate representation in capital cases.

''(c) REPORT TO CONGRESS.—Not later than 180 days after the end of each fiscal year for which grants are made under this subtitle, the Attorney General shall submit to Congress a report that includes, with respect to each State that prescribes, authorizes, or permits the penalty of death for any offense—

''(1) a detailed description of such State's system for providing representation to indigent persons in capital cases;

''(2) the amount of any grant funds withheld under subsection (a) for such fiscal year from such State or any unit of local government appertaining thereto, and an explanation of why such funds were withheld; and

''(3) the amount of any grant funds released to such State for such fiscal year pursuant to a waiver by the Attorney General under subsection (b), and an explanation of why waiver was granted.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 2 of the Violent Crime Control and Law Enforcement Act of 1994 is amended by inserting after the item relating to section 20109 the following:

''Sec. 20110. Standards for capital representation.''.

SEC. 204. EFFECT ON PROCEDURAL DEFAULT RULES.

(a) IN GENERAL.—Section 2254(e) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking ''In a proceeding'' and inserting ''Except as provided in paragraph (3), in a proceeding''; and

(2) by adding at the end the following:

''(3) In a proceeding instituted by an applicant under sentence of death, the court shall neither presume a finding of fact made by a State court to be correct nor decline to consider a claim on the ground that the applicant failed to raise such claim in State court at the time and in the manner prescribed by State law, if—

''(A) the applicant was financially unable to obtain adequate representation at the stage of the State proceedings at which the State court made the finding of fact or the applicant failed to raise the claim, and the applicant did not waive representation by counsel; and

''(B) the State did not provide representation to the applicant under a State system for providing representation that satisfied the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.''.

(b) NO RETROACTIVE EFFECT.—The amendments made by this section shall not apply to any case in which the relevant State court proceeding occurred before the end of the first fiscal year following the formulation of standards by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

SEC. 205. CAPITAL DEFENSE RESOURCE GRANTS.

Section 3006A of title 18, United States Code, is amended—

(1) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

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

''(i) CAPITAL DEFENSE RESOURCE GRANTS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'capital case'—

''(i) means any criminal case in which a defendant prosecuted in a State court is subject to a sentence of death or in which a death sentence has been imposed; and

''(ii) includes all proceedings filed in connection with the case, including trial, appellate, and Federal and State post-conviction proceedings;

''(B) the term 'defense services' includes—

''(i) recruitment of counsel;

''(ii) training of counsel; and

''(iii) legal and administrative support and assistance to counsel; and

''(C) the term 'Director' means the Director of the Administrative Office of the United States Courts.

''(2) GRANT AWARD AND CONTRACT AUTHORITY.—Notwithstanding subsection (g), the Director shall award grants to, or enter into contracts with, public agencies or private nonprofit organizations for the purpose of providing defense services in capital cases.

''(3) PURPOSES.—Grants and contracts awarded under this subsection shall be used in connection with capital cases in the jurisdiction of the grant recipient for 1 or more of the following purposes:

''(A) Enhancing the availability, competence, and prompt assignment of counsel.

''(B) Encouraging continuity of representation between Federal and State proceedings.

''(C) Increasing the efficiency with which such cases are resolved.

''(4) GUIDELINES.—The Director, in consultation with the Judicial Conference of the United States, shall develop guidelines to ensure that defense services provided by recipients of grants and contracts awarded under this subsection are consistent with applicable legal and ethical proscriptions governing the duties of counsel in capital cases.

''(5) CONSULTATION.—In awarding grants and contracts under this subsection, the Director shall consult with representatives of the highest State court, the organized bar, and the defense bar of the jurisdiction to be served by the recipient of the grant or contract, and shall ensure coordination with grants administered by the State Justice Institute pursuant to section 207A of the State Justice Institute Act of 1984.''.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.

Section 2513(e) of title 28, United States Code, is amended by striking ''$5,000'' and inserting ''$50,000 for each 12-month period of incarceration, except that a plaintiff who was unjustly sentenced to death may be awarded not more than $100,000 for each 12-month period of incarceration.''.

SEC. 302. COMPENSATION IN STATE DEATH PENALTY CASES.

Section 20105(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)(1)) is amended by—

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

(2) striking the period at the end of subparagraph (B) and inserting ''; and''; and

(3) adding at the end the following:

''(C) provide assurances to the Attorney General that the State, if it prescribes, authorizes, or permits the penalty of death for any offense, has established or will establish not later than 18 months after the enactment of the Innocence Protection Act of 2001, effective procedures for—

''(i) reasonably compensating persons found to have been unjustly convicted of an offense against the State and sentenced to death; and

''(ii) investigating the causes of such unjust convictions, publishing the results of such investigations, and taking steps to prevent such errors in future cases.''.

SEC. 303. CERTIFICATION REQUIREMENT IN FEDERAL DEATH PENALTY PROSECUTIONS.

(a) IN GENERAL.—Chapter 228 of title 28, United States Code, is amended by adding at the end the following:

''§ 3599. Certification requirement

''(a) CERTIFICATION BY ATTORNEY GENERAL.—The Government shall not seek a sentence of death in any case brought before a court of the United States except upon the certification in writing of the Attorney General, which function of certification may not be delegated, that the Federal interest in the prosecution is more substantial than the interests of the State or local authorities.

''(b) REQUIREMENTS.—A certification under subsection (a) shall state the basis on which the certification was made and the reasons for the certification.

''(c) STATE INTEREST.—In States where the imposition of a sentence of death is not authorized by law, the fact that the maximum Federal sentence is death does not constitute a more substantial interest in Federal prosecution.

''(d) DEFINITION OF STATE.—For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(e) RULE OF CONSTRUCTION.—This section does not create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 228 of title 28, United States Code, is amended by adding at the end the following:

''3599. Certification requirement.''.

SEC. 304. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

(a) PURPOSE.—The purpose of this section is to clarify that juries in death penalty prosecutions brought under the drug kingpin statute—like juries in all other Federal death penalty prosecutions—have the option of recommending life imprisonment without possibility of release.

(b) CLARIFICATION.—Section 408(l) of the Controlled Substances Act (21 U.S.C. 848(l)), is amended by striking the first 2 sentences and inserting the following: ''Upon a recommendation under subsection (k) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law.''.

SEC. 305. RIGHT TO AN INFORMED JURY.

Section 20105(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)(1)), as amended by section 302 of this Act, is amended by—

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

(2) striking the period at the end of subparagraph (C) and inserting ''; and''; and

(3) adding at the end the following:

''(D) provide assurances to the Attorney General that in any capital sentencing proceeding occurring after the date of enactment of the Innocence Protection Act of 2001 in which the jury has a role in determining the sentence imposed on the defendant, the court, at the request of the defendant, shall inform the jury of all statutorily authorized sentencing options in the particular case, including applicable parole eligibility rules and terms.''.

SEC. 306. ANNUAL REPORTS.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Attorney General shall prepare and transmit to Congress a report concerning the administration of capital punishment laws by the Federal Government and the States.

(b) REPORT ELEMENTS.—The report required under subsection (a) shall include substantially the same categories of information as are included in the Bureau of Justice Statistics Bulletin entitled ''Capital Punishment 1999'' (December 2000, NCJ 184795), and shall also include the following additional categories of information, if such information can practicably be obtained:

(1) The percentage of death-eligible cases in which a death sentence is sought, and the percentage in which it is imposed.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) The percentage of capital cases in which counsel is retained by the defendant, and the percentage in which counsel is appointed by the court.

(4) The percentage of capital cases in which life without parole is available as an alternative to a death sentence, and the sentences imposed in such cases.

(5) The percentage of capital cases in which life without parole is not available as an alternative to a death sentence, and the sentences imposed in such cases.

(6) The frequency with which various statutory aggravating factors are invoked by the prosecution.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside, and a short statement of the reasons therefore.

(c) REQUEST FOR ASSISTANCE.—In compiling the information referred to in subsection (b),

the Attorney General shall, when necessary, request assistance from State and local prosecutors, defense attorneys, and courts, as appropriate. Requested assistance, whether provided or denied by a State or local official or entity, shall be noted in the reports referred to in subsection (a).

(d) PUBLIC DISCLOSURE.—The Attorney General or the Director of the Bureau of Justice Assistance, as appropriate, shall ensure that the reports referred to in subsection (a) are—

(1) distributed to national print and broadcast media; and

(2) posted on an Internet website maintained by the Department of Justice.

SEC. 307. SENSE OF CONGRESS REGARDING THE EXECUTION OF JUVENILE OFFENDERS AND THE MENTALLY RETARDED.

It is the sense of Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to a person who is mentally retarded or who had not attained the age of 18 years at the time of the offense.

INNOCENCE PROTECTION ACT OF 2001—SECTION-BY-SECTION SUMMARY

OVERVIEW

The Innocence Protection Act of 2001 is a carefully crafted package of criminal justice reforms aimed at reducing the risk that innocent persons may be executed. Most urgently the bill would afford greater access to DNA testing by convicted offenders; and help States improve the quality of legal representation in capital cases.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Findings and purposes. Legislative findings and purposes in support of this title.

Sec. 102. DNA testing in Federal criminal justice system. Establishes rules and procedures governing applications for DNA testing by inmates in the Federal system. Courts shall order DNA testing if it has the scientific potential to produce new exculpatory evidence material to the inmate's claim of innocence. When the test results are exculpatory, courts shall order a hearing and make such further orders as may be appropriate under existing law. Prohibits the destruction of biological evidence in a criminal case while a defendant remains incarcerated, absent prior notification to such defendant of the government's intent to destroy the evidence.

Sec. 103. DNA testing in State criminal justice system. Conditions receipt of Federal grants for DNA-related programs on an assurance that the State will adopt adequate procedures for preserving biological material and making DNA testing available to inmates.

Sec. 104. Prohibition pursuant to section 5 of the 14th Amendment. Prohibits States from denying applications for DNA testing by death row inmates, if the proposed testing has the scientific potential to produce new exculpatory evidence material to the inmate's claim of innocence. Also prohibits States from denying inmates a meaningful opportunity to prove their innocence using the results of DNA testing. Inmates may sue for declaratory or injunctive relief to enforce these prohibitions.

Sec. 105. Grants to prosecutors for DNA testing programs. Permits States to use grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs to fund the growing number of prosecutor-initiated programs that review convictions to identify cases in which DNA testing is appropriate and that offer DNA testing to inmates in such cases.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

Sec. 201. National Commission on Capital Representation. Establishes a National Commission on Capital Representation to develop standards for providing adequate legal representation for indigents facing a death sentence. The Commission would be composed of nine members and would include experienced prosecutors, defense attorneys, and judges, and would complete its work within on year. Total authorization $1,000,000.

Sec. 202. Capital defense incentive grants. Establishes a grant program, to be administered by the State Justice Institute, to help States implement the Commission's standards and otherwise improve the quality of representation in capital cases. Authorization is $50,000,000 for the first year, and such sums as may be necessary for the two years that follow.

Sec. 203. Amendments to prison grant programs. Directs the Attorney General to withhold a portion of the funds awarded under the prison grant programs from death penalty States that have not established or do not maintain a system for providing legal representation in capital cases that satisfies the Commission's standards. The Attorney General may waive the withholding requirement for one year under certain circumstances.

Sec. 204. Effect on procedural default rules. Provides that certain procedural barriers to Federal habeas corpus review shall not apply if the State did not provide legal representation to the habeas petitioner under a State system for providing representation that satisfied the Commission's standards. This section does not apply in any case in which the relevant State court proceeding occurred more than 1 year before the formulation of such standards.

Sec. 205. Capital defense resource grants. Amends the Criminal Justice Act, 18 U.S.C. §3006A, to make more Federal funding available for purposes of enhancing the availability, competence, and prompt assignment of counsel in capital cases, encouraging the continuity of representation in such cases, and increasing the efficiency with which capital cases are resolved.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Increased compensation in federal cases. Raises the total amount of damages that may be awarded against the United States in cases of unjust imprisonment from $5,000 to $50,000 a year in a non-death penalty case, or $100,000 a year in a death penalty case.

Sec. 302. Compensation in state death cases. Encourages states to maintain effective procedures for reasonably compensating persons who were unjustly convicted and sentenced to death, and investigating the causes of such unjust convictions in order to prevent such errors from recurring.

Sec. 303. Certification requirement in federal death penalty prosecutions. Increases accountability by requiring the Attorney General, when seeking the death penalty in any case, to certify that the federal interest in the prosecution is more substantial than the interests of the state or local authorities. Modeled on the certification requirements in the federal civil rights and juvenile delinquency laws, this section codifies existing practice as reflected in section 9–10.070 of the U.S. Attorney's Manual. This section does not create any rights enforceable at law by any party in any matter civil or criminal.

Sec. 304. Alternative of life imprisonment without possibility of release. Clarifies that juries in death penalty prosecutions brought under the drug kingpin statute, 21 U.S.C. §848(l), have the option of recommending life imprisonment without possibility of release. This amendment incorporates into the drug kingpin statute a procedural protection that federal law already expressly provides to the vast majority of capital defendants.

Sec. 305. Right to an informed jury. Encourages states to allow defendants in capital cases to have the jury instructed on all statutorily-authorized sentencing options, including applicable parole eligibility rules and terms.

Sec. 306. Annual reports. Directs the Justice Department to prepare an annual report regarding the administration of the nation's capital punishment laws. The report must be submitted to Congress, distributed to the press and posted on the Internet.

Sec. 307. Sense of the Congress regarding the execution of juvenile offenders and the mentally retarded. Expresses the sense of the Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to juvenile offenders and the mentally retarded.

Mr. SMITH of Oregon. Mr. President, I am proud to be a co-sponsor of this new and improved Innocence Protection Act. The Innocence Protection Act we introduced last year was widely heralded as providing much-needed improvements to our nation's already strong judicial system. This year, the bill itself has been strengthened, so it can better benefit the truly innocent without imposing undue hardship on our hard-working law enforcement personnel. While our court and law enforcement officials work extremely hard to ensure justice for all, occasionally mistakes are made.

To prevent these rare instances, The Innocence Protection Act encourages appropriate use of DNA testing, and provision of competent counsel. The bill also provides for adequate compensation in the rare case that a person is wrongfully imprisoned, and encourages states to examine these situations to prevent their recurrence. The Innocence Protection Act proposes to apply technological advances of the 21st century evenly across the country to ensure that justice is served swiftly and fairly, regardless of where you live.

Both supporters and opponents of the death penalty can support this bill, which will only improve the integrity of our Criminal Justice System. By helping ensure that the true perpetrators of heinous crimes are behind bars, the innocent can live in a safer world. I am a supporter of the death penalty. I believe that there are some times when humankind can act in a manner so odious, so heinous, and so depraved that the right to life is forfeited. Notwithstanding this belief, indeed, because of this belief, I am reintroducing the Innocence Protection Act of 2001 with Senator LEAHY and others today.

Clearly, there is a growing interest in this issue in Congress. I feel strongly that this is a bill whose time has come, and I look forward to working with my colleagues in the House and Senate to ensure its passage this session.

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

S. 487. A bill to amend chapter 1 of title 17, United States Code, relating to

the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, today I am pleased to introduce with my distinguished colleague, Senator LEAHY, legislation entitled the ''Technology Education and Copyright Harmonization Act'' or fittingly abbreviated as the ''TEACH Act,'' which updates the educational use provisions of the copyright law to account for advancements in digital transmission technologies that support distance learning.

While distance learning is far from a new concept, there is no ''official'' definition as to what falls under the umbrella of distance learning. There is, however, general agreement that distance education covers the various forms of study at all levels in which students are separated from instructors by time or space. By creating new avenues of communication, technology has paved the way for so-called ''distance learning,'' starting with correspondence courses, and later with instructional broadcasting. Most recently, however, the introduction of online education has revolutionized the world of ''distance learning.'' While the benefits of all forms of distance learning are self-evident, online learning opens unprecedented educational opportunities. With the click of a mouse, students in remote areas are able to access a broad spectrum of courses from the finest institutions and ''chat'' with other students across the country.

Distance education, and the use of high technology tools such as the Internet in education, hold great promise for students in states like Utah. Students in remote areas of my state are now able to link up to resources previously only available to those in cities or at prestigious educational institutions. For many Utahns, this means having access to courses or being able to see virtual demonstrations of principles that until now they have only read about.

True to its heritage, Utah is a pioneer among states in blazing the trail to the next century, making tomorrow's virtual classrooms a reality today. Fittingly, since it is home to one of the original six universities that pioneered the Internet, the State of Utah and the Utah System of Higher Education, as well as a number of individual universities in the state have consistently been recognized as technology and web-education innovators. Such national recognition reflects, in part, Utah's high-tech industrial base, its learning-oriented population, and the fact that Utah was the first state with a centrally coordinated statewide system for distance learning. In the course of preparing the report that resulted in this legislation, I was pleased to host the Register of Copyrights at a distance education exposition and copyright round table that took place at the nerve center of that system, the Utah Education Network, where we saw many of the exciting technologies being developed and implemented in Utah, by Utahns, to make distance education a reality.

At the event in Salt Lake City, Ms. Peters and I dropped in on a live online art history class hosted in Orem, that included high school and college students scattered from Alpine in the north to Lake Powell in the south, nearly the length of the state. And the promise of distance education extends far beyond the traditional student, making expanded opportunities available for working parents, senior citizens, and anyone else with a desire to learn.

This legislation will make it easier for the teacher who connects with her students online to enhance the learning process by illustrating music appreciation principles with appropriately limited sound recordings or illustrate visual design or story-telling principles with appropriate movie clips. Or she might create wholly new experiences such as making a hypertext poem that links significant words or formal elements to commentary, similar uses in other contexts, or other sources for deeper understanding, all accessible at the click of a mouse. These wholly new interactive educational experiences, or more traditional ones now made available around the students' schedule, will be made more easily and more inexpensively by this legislation. Beyond the legislative safe harbor provided by this legislation, opportunities for students and lifetime learners of all kinds, in all kinds of locations, is limited only by the human imagination and the cooperative creativity of the creators and users of copyrighted works. I hope that creative licensing arrangements will be spurred to make even more exciting opportunities available to students and lifelong learners, and that incentives to create those experiences will continue to encourage innovation in education, art and entertainment online. The possibilities for everyone in the wired world are thrilling to contemplate.

While the development of digital technology has fostered the tremendous growth of distance learning in the United States, online education will work only if teachers and students have affordable and convenient access to the highest quality educational materials. In fact, in its recent report, the Web-Based Commission, established by Congress to develop policies to ensure that new technologies will enhance learning, concluded that United States copyright practice presents significant impediments to online education. Additionally, the Web-Based Commission concluded that there are some needed reforms in higher education regulations and statutes. Specifically, the Commission identifies reforms needed in the so-called 12 hour rule, the 50 percent rule and the ban on incentive based compensation. These education recommendations are not included in the legislation I am introducing today. However, I want to put my colleagues on notice that I will pushing for these reforms and leave open the possibility of amending this particular bill or seek other vehicles to include such education reform provisions which will improve delivery of distance education to a wider variety of students. We will be discussing education reforms in the Senate in the coming weeks, and I think it is important that any education reform include the kinds of reforms that will promote the use of high technologies in education, such as the Internet. And I intend to work to have these reforms included in any larger education package considered this year.

As part of its mandate under the Digital Millennium Copyright Act, DMCA, which laid the basic copyright rules in a digital environment, the Copyright Office was tasked to study the impact of copyright law on online education and submit recommendations on how to promote distance learning through digital technologies while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works. Without adequate incentives and protections, those who create these materials will be disinclined to make their works available for use in online education. The interests of educators, students, and copyright owners need not be divergent; indeed, I believe they coincide in making the most of this medium. As expected, the Copyright Office has presented us with a detailed and comprehensive study of the copyright issues involved in digital distance education that takes into account a wide range of views expressed by various groups, including copyright owners, educational institutions, technologists, and libraries. As part of its report, the Copyright Office concluded that the current law should be updated to accommodate digital educational technologies.

After careful review and consideration of the findings and recommendations presented in the report prepared by the Copyright Office, not to mention my enormous respect for and confidence in the Register of Copyrights, I fully support the Office's recommendation to update the current copyright law in a manner that promotes the use of high technology in education, such as distance learning over the Internet, while maintaining appropriate incentives for authors. While the bill we are introducing today is based on the hard work and expert advice of the Copyright Office, and is therefore, I believe a very good bill, I welcome constructive suggestions from improvements from any interested party as this bill moves through the legislative process.

Currently, United States copyright law contains a number of exemptions

to copyright owners' rights relating to face-to-face classroom teaching and instructional broadcasts. While these exemptions embody the policy that certain uses of copyrighted works for instructional purposes should be exempt from copyright control, the current exemptions were not drafted with online, interactive digital technologies in mind. As a result, the Copyright Office concluded that the current exemptions related to instructional purposes are probably inapplicable to most advanced digital delivery systems and without a corresponding change, the policy behind the existing law will not be advanced.

Drawing from the recommendations made by the Copyright Office, the primary goal of this legislation is simple and straight forward: to promote digital distance learning by permitting certain limited instructional activities to take place without running afoul of the rights of copyright owners. The bill does not limit the bounds of ''fair use'' in the educational context, but provides something of a ''safe harbor'' for online distance education. And nothing limits the possibilities for creative licensing of copyrighted works for even more innovative online educational experiences. While Section 110(1) of the Copyright Act exempts the performance or display of any work in the course of face-to-face teachings, Section 110(2) of the Copyright Act limits these exemptions in cases of instructional broadcasting. Under Section 110(2), while displays of all works are permitted, only performances of nondramatic literary or mystical works are permitted. Thus, an instructor is currently not able to show a movie or perform a play via educational broadcasting.

This legislation would amend Section 110(2) of the Copyright Act to create a new set of rules in the digital education world that, in essence, represent a hybrid of the current rules applicable to face-to-face instruction and instructional broadcasting. In doing this, the legislation amends Section 110(2) by expanding the permitted uses currently available for instructional broadcasting in a modest fashion by including the performance of any work not produced primarily for instructional use in reasonable and limited portions.

In addition, in order to modernize the statute to account for digital technologies, the legislation amends Section 110(2) by eliminating the requirement of a physical classroom and clarifies that the instructional activities exempted in Section 110(2) of the Copyright Act apply to digital transmissions as well as analog. The legislation also permits a limited right to reproduce and distribute transient copies created as part of the automated process of digital transmissions. Mindful of the new risks involved with digital transmissions, the legislation also creates new safeguards for copyright owners. These include requirements that those invoking the exemptions institute a policy to promote compliance with copyright law and apply technological measures to prevent unauthorized access and uses.

Moreover, in order to allow the exempted activities to take place in online education asynchronously, a new amendment to the ephemeral recording exemption is proposed that would permit an instructor to upload a copyrighted work onto a server to be later transmitted to students. Again, extra safeguards are in place to ensure that no additional copies beyond those necessary to the transmission can be made and that the retention of the copy is limited in time.

I believe that this legislation is necessary to foster and promote the use of high technology tools, such as the Internet, in education and distance learning, while at the same time maintains a careful balance between copyright owners and users. Through the increasing influence of educational technologies, virtual classrooms are popping up all over the country and what we do not want to do is stand in the way of the development and advancement of innovative technologies that offer new and exciting educational opportunities. I think we all agree that digital distance should be fostered and utilized to the greatest extent possible to deliver instruction to students in ways that could have been possible a few years ago. We live at a point in time when we truly have an opportunity to help shape the future by influencing how technology is used in education so I hope my colleagues will join us in supporting this modest update of the copyright law that offers to make more readily available distance education in a digital environment to all of our students.

I ask unanimous consent that the text of the bill and explanatory section-by-section analysis, be printed in the RECORD.

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

S. 487

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 ''Technology, Education And Copyright Harmonization Act of 2001''.

SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES.

Section 110(2) of title 17, United States Code, is amended—

(1) by striking the matter preceding subparagraph (A) and inserting the following:

''(2) except with respect to a work produced primarily for instructional use or a performance or display that is given by means of a copy that is not lawfully made and acquired under this title, and the transmitting governmental body or nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work, by or in the course of a transmission, reproduction of such work in transient copies or phonorecords created as a part of the automatic technical process of a digital transmission, and distribution of such copies or phonorecords in the course of such transmission, to the extent technologically necessary to transmit the performance or display, if—'';

(2) in subparagraph (A) by striking all beginning with ''the performance'' through ''regular'' and inserting the following: ''the performance or display is made by or at the direction of an instructor as an integral part of a class session offered as a regular'';

(3) by striking subparagraph (C) and inserting the following:

''(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

''(i) students officially enrolled in the course for which the transmission is made; or

''(ii) officers or employees of governmental bodies as part of their official duties or employment; and''; and

(4) by adding at the end the following:

''(D) any transient copies are retained for no longer than reasonably necessary to complete the transmission; and

''(E) the transmitting body or institution—

''(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

''(ii) in the case of digital transmissions, applies technological measures that reasonably prevent unauthorized access to and dissemination of the work, and does not intentionally interfere with technological measures used by the copyright owner to protect the work.''.

SEC. 3. EPHEMERAL RECORDINGS.

(a) IN GENERAL.—Section 112 of title 17, United States Code, is amended—

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

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

''(f) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled to transmit a performance or display of a work that is in digital form under section 110(2) to make copies or phonorecords embodying the performance or display to be used for making transmissions authorized under section 110(2), if—

''(1) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2);

''(2) such copies or phonorecords are used solely for transmissions authorized under section 110(2); and

''(3) the body or institution does not intentionally interfere with technological measures used by the copyright owner to protect the work.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 802(c) of title 17, United States Code, is amended in the third sentence by striking ''section 112(f)'' and inserting ''section 112(g)''.

SEC. 4. IMPLEMENTATION BY COPYRIGHT OFFICE.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Copyright Office shall conduct a study and submit a report to Congress on the status of—

(1) licensing by private and public educational institutions of copyrighted works for digital distance education programs, including—

(A) live interactive distance learning classes;

(B) faculty instruction recorded without students present for later transmission; and

(C) asynchronous delivery of distance learning over computer networks; and

(2) the use of copyrighted works in such programs.

(b) CONFERENCE.—Not later than 2 years after the date of enactment of this Act, the Copyright Office shall—

(1) convene a conference of interested parties, including representatives of copyright owners, nonprofit educational institutions and nonprofit libraries and archives to develop guidelines for the use of copyrighted works for digital distance education under the fair use doctrine and section 110 (1) and (2) of title 17, United States Code;

(2) to the extent the Copyright Office determines appropriate, submit to the Committees on the Judiciary of the Senate and the House of Representatives such guidelines, along with information on the organizations, Government agencies, and institutions participating in the guideline development and endorsing the guidelines; and

(3) post such guidelines on an Internet website for educators, copyright owners, libraries, and other interested persons.

SECTION-BY-SECTION ANALYSIS OF THE TECHNOLOGY, EDUCATION, AND COPYRIGHT HARMONIZATION ACT

SECTION 1. SHORT TITLE

This bill may be cited as the ''Technology, Education And Copyright Harmonization Act of 2001'' or the TEACH Act.

SECTION 2. EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES

The bill updates section 110(2) to allow the similar activities to take place using digital delivery mechanisms that were permitted under the basic policy balance struck in 1976, while minimizing the additional risks to copyright owners that are inherent in exploiting works in a digital format. Current law allows performances and displays of all categories of copyrighted works in classroom settings, under section 110(1) of the Copyright Act, and allows performances of nondramatic literary and musical works and displays of works during certain education-related transmissions (usually television-type transmission) under Section 110(2). Section 110(2) is amended to allow performances of categories of copyrighted works—such as portions of audiovisual works, sound recordings and dramatic literary and musical works—in addition to the non-dramatic literary and musical works that may be performed under current law. Because of the potential adverse effect on the secondary markets of such works, only reasonable and limited portions of these additional works may be performed under the exemption. Excluded from the exemption are those works that are produced primarily from instructional use, because for such works, unlike entertainment products or materials of a general educational nature, the exemption could significantly cut into primary markets, impairing incentives to create. As an additional safeguard, this provision requires the exempted performance or display to be made from a lawful copy. Since digital transmissions implicate the reproduction and distribution rights in addition to the public performance right, section 110(2) is further amended to add coverage of the rights of reproduction/and or distribution, but only to the extent technologically required in order to transmit a performance or display authorized by the exemption.

Section 110(2)(C) eliminates the requirement of a physical classroom by permitting transmissions to be made to students officially enrolled in the course and to government employees, regardless of their physical location. In lieu of this limitation two safeguards have been added. First, section 110(2)(A) emphasizes the concept of mediated instruction by ensuring that the exempted performance or display is analogous to the type of performance or display that would take place in a live classroom setting. Second, section 110(2)(C) adds the requirement that, to the extent technologically feasible, the transmission must be made solely for reception by the defined class of eligible recipients.

Sections 110(2)(D), (E)(i) and (E)(ii) add new safeguards to counteract the new risks posed by the transmission of works to students in digital form. Paragraph (D) requires that transient copies permitted under the exemption be retained no longer than reasonably necessary to complete the transmission. Paragraph (E)(i) requires that beneficiaries of the exemption institute policies regarding copyright; provide information materials to faculty, students, and relevant staff members that accurately describe and promote compliance with copyright law; and provide notice to students that materials may be subject to copyright protection. Paragraph 110(2)(E)(ii) requires that the transmitting organization apply measures to protect against both unauthorized access and unauthorized dissemination after access has been obtained. This provision also specifies that the transmitting body or institution may not intentionally interfere with protections applied by the copyright owners themselves.

SECTION 3. EPHEMERAL RECORDINGS

Section 112 is amended by adding a new subsection which permits an educator to upload a copyrighted work onto a server to facilitate transmissions permitted under section 110(2) to students enrolled in his or her course. Limitations have been imposed upon the exemption similar to those set out in other subsections of section 112. Paragraph 112(f)(1) specifies that any such copy be retained and used solely by the entity that made it and that no further copies be reproduced from it except the transient copies permitted under section 110(2). Paragraph 112(f)(2) requires that the copy be used solely for transmissions authorized under section 110(2). Paragraph 112(f)(3) prohibits a body or institution from intentionally interfering with technological protection measures used by the copyright owner to protect the work.

SECTION 4. IMPLEMENTATION BY COPYRIGHT OFFICE

Subsection (a) requires the Copyright Office, not later than 2 years after the date of the enactment, to conduct a study and submit a report to Congress on the status of licensing for private and public school digital distance education programs and the use of copyrighted works in such programs. Subsection (b) requires the Copyright Office, not later than 2 years after the date of enactment, to convene a conference of other interested parties on the subject of the use of copyrighted works in education and, to the extent the Office deems appropriate, develop guidelines for the clarification of the appropriate use of copyrighted works in educational settings, including distance education, for submission to Congress and for posting on the Copyright Office website as a reference resource.

Mr. LEAHY. Mr. President, an important responsibility of the Senate Judiciary Committee is fulfilling the mandate set forth in Article 1, section 8 of the Constitution, ''to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'' Chairman HATCH and I, and other colleagues on the Judiciary Committee, have worked together successfully over the years to update and make necessary adjustments to our copyright, patent and trademark laws to carry out this responsibility. We have strived to do so in a manner that advances the rights of intellectual property owners while protecting the important interests of users of the creative works that make our culture a vibrant force in this global economy.

Several years ago, as part of the Digital Millennium Copyright Act, DMCA, we asked the Copyright Office to perform a study of the complex copyright issues involved in distance education and to make recommendations to us for any legislative changes. In conducting that study, Maybeth Peters, the Registrar of Copyrights met informally with interested Vermonters at Champlain College in Burlington, Vermont, to hear their concerns on this issue. Champlain College has been offering on-line distance learning programs since 1993, with a number of on-line programs, including for degrees in accounting, business, and hotel-restaurant management.

The Copyright Office released its report in May, 1999, at a hearing held in this Committee, and made valuable suggestions on how modest changes in our copyright law could go a long way to foster the appropriate use of copyrighted works in valid distance learning activities. I am pleased to join Senator HATCH in introducing the Technology, Education and Copyright Harmonization, or TEACH, Act, that incorporates the legislative recommendations of that report. This legislation will help clarify the law and allow educators to use the same rich material in distance learning over the Internet that they are able to use in face-to-face classroom instruction.

The growth of distance learning is exploding, largely because it is responsive to the needs of older, non-traditional students. The Copyright Office, CO, report noted two years ago that, by 2002, the number of students taking distance education courses will represent 15 percent of all higher education students. Moreover, the typical average distance learning student is 34 years old, employed full-time and has previous college credit. More than half are women. In increasing numbers, students in other countries are benefitting from educational opportunities here through U.S. distance education programs.

In high schools, distance education makes advanced college placement and college equivalency courses available,

a great opportunity for residents in our more-rural states. In colleges, distance education makes lifelong learning a practical reality.

Not only does distance education make it more convenient for many students to pursue an education, for students who have full-time work commitments, who live in rural areas or in foreign countries, who have difficulty obtaining child or elder care, or who have physical disabilities, distance education may be the only means for them to pursue an education. These are the people with busy schedules who need the flexibility that on-line programs offer: virtual classrooms accessible when the student is ready, and free, to log-on.

In Vermont and many other rural states, distance learning is a critical component of any quality educational and economic development system. In fact, the most recent Vermont Telecommunications Plan, which was published in 1999 and is updated at regular intervals, identifies distance learning as being critical to Vermont's development. It also recommends that Vermont consider ''using its purchasing power to accelerate the introduction of new [distance learning] services in Vermont.'' Technology has empowered individuals in the most remote communities to have access to the knowledge and skills necessary to improve their education and ensure they are competitive for jobs in the 21st century.

Several years ago, I was proud to work with the state in establishing the Vermont Interactive Television network. This constant two-way videoconferencing system can reach communities, schools and businesses in every corner of the State. Since we first successfully secured funds to build the backbone of the system, Vermont has constructed fourteen sites. The VIT system is currently running at full capacity and has demonstrated that in Vermont, technology highways are just as important as our transportation highways.

No one single technology should be the platform for distance learning. In Vermont, creative uses of available resources have put in place a distance learning system that employees T–1 lines in some areas and traditional internet modem hook-ups in others. Several years ago, the Grand Isle Supervisory Union received a grant from the U.S. Department of Agriculture to link all the schools within the district with fiber optic cable. There are not a lot of students in this Supervisory Union but these is a lot of land separating one school from another. The bandwidth created by the fiber optic cables has not only improved the educational opportunities in the four Grand Isle towns, but it has also provided a vital economic boost to the area's business.

While there are wonderful examples of the use of distance learning inside Vermont, the opportunities provided by these technologies are not limited to the borders of one state, or even one country. Champlain College, a small school in Burlington, Vermont has shown this is true when it adopted a strategic plan to provide distance learning for students throughout the world. Under the leadership of President Roger Perry, Champlain College now has more students enrolled than any other college in Vermont. The campus in Vermont has not been overwhelmed with the increase. Instead, Champlain now teaches a large number of students overseas through its on-line curriculum. Similarly, Marlboro College in Marlboro, Vermont, offers innovative graduate programs designed for working professionals with classes that meet not only in person but also online.

The Internet, with its interactive, multi-media capabilities, has been a significant development for distance learning. By contrast to the traditional, passive approach of distance learning where a student located remotely from a classroom was able to watch a lecture being broadcast at a fixed time over the air, distance learners today can participate in real-time class discussions, or in simultaneous multimedia projects. The Copyright Office report confirms what I have assumed for some time—that ''the computer is the most versatile of distance education instruments,'' not just in terms of flexible schedules, but also in terms of the material available.

Over twenty years ago, the Congress recognized the potential of broadcast and cable technology to supplement classroom teaching, and to bring the classroom to those who, because of their disabilities or other special circumstances, are unable to attend classes. At the same time, Congress also recognized the potential for unauthorized transmissions of works to harm the markets for educational uses of copyrighted materials. The present Copyright Act strikes a careful balance and includes two narrowly crafted exemptions for distance learning, in addition to the general fair use exemption.

Under current law, the performance or display of any work in the course of face-to-face instruction in a classroom is exempt from the exclusive rights of a copyright owner. In addition, the copyright law allows transmission of certain performances or displays of copyrighted works to be sent to a classroom or a similar place which is normally devoted to instruction, to persons whose disabilities or other special circumstances prevent classroom attendance, or to government employees. While this exemption is technology neutral and does not limit authorized ''transmissions'' to distance learning broadcasts, the exemption does not authorize the reproduction or distribution of copyrighted works—a limitation that has enormous implications for transmissions over computer networks. Digital transmissions over computer networks involve multiple acts of reproduction as a data packet is moved from one computer to another.

The need to update our copyright law to address new developments in online distance learning was highlighted in the December, 2000 report of the Web-Based Education Commission, headed by former Senator Bob Kerrey. This Commission noted that:

> Current copyright law governing distance education ... was based on broadcast models of telecourses for distance education. That law was not established with the virtual classroom in mind, nor does it resolve emerging issues of multimedia online, or provide a framework for permitting digital transmissions.

This report further observed that ''This current state of affairs is confusing and frustrating for educators. ... Concern about inadvertent copyright infringement appears, in many school districts, to limit the effective use of the Internet as an educational tool.'' In conclusion, the report concluded that our copyright laws were ''inappropriately restrictive.''

The TEACH Act makes three significant expansions in the distance learning exemption in our copyright law, while minimizing the additional risks to copyright owners that are inherent in exploiting works in a digital format. First, the bill eliminates the current eligibility requirements for the distance learning exemption that the instruction occur in a physical classroom or that special circumstances prevent the attendance of students in the classroom.

Second, the bill clarifies that the distance learning exemption covers the temporary copies necessarily made in networked servers in the course of transmitting material over the Internet.

Third, the current distance learning exemption only permits the transmission of the performance of ''nondramatic literary or musical works,'' but does not allow the transmission of movies or videotapes, or the performance of plays. The Kerrey Commission report cited this limitation as an obstacle to distance learning in current copyright law and noted the following examples: A music instructor may play songs and other pieces of music in a classroom, but must seek permission from copyright holders in order to incorporate these works into an online version of the same class. A children's literature instructor may routinely display illustrations from childrens' books in the classroom, but must get licenses for each one for on online version of the course.

To alleviate this disparity, the TEACH Act would amend current law to allow educators to show limited portions of dramatic literary and musical works, audiovisual works, and sound recordings, in addition to the complete versions of nondramatic literary and musical works which are currently exempted.

This legislation is a balanced proposal that expands the educational use

exemption in the copyright law for distance learning, but also contains a number of safeguards for copyright owners. In particular, the bill excludes from the exemption those works that are produced primarily for instructional use, because for such works, unlike entertainment products or materials of a general educational nature, the exemption could significantly cut into primary markets, impairing incentives to create. Indeed, the Web-Based Education Commission urged the development of ''high quality online educational content that meets the highest standards of educational excellence.'' Copyright protection can help provide the incentive for the development of such content.

In addition, the bill requires the use by distance educators of technological safeguards to ensure that the dissemination of material covered under the exemption is limited only to the students who are intended to receive it.

Finally, the TEACH Act directs the Copyright Office to conduct a study on the status of licensing for private and public school digital distance education programs and the use of copyrighted works in such programs, and to convene a conference to develop guidelines for the use of copyrighted works for digital distance education under the fair use doctrine and the educational use exemptions in the copyright law. Both the Copyright Office report and the Kerrey Commission noted dissatisfaction with the licensing process for digital copyrighted works. According to the Copyright Office, many educational institutions ''describe having experienced recurrent problems [that] . . . can be broken down into three categories: difficulty locating the copyright owner; inability to obtain a timely response; and unreasonable prices for other terms.'' Similarly, the Kerrey Commission report echoed the same concern. A study focusing on these licensing issues will hopefully prove fruitful and constructive for both publishers and educational institutions.

The Kerrey Commission report observed that ''[c]oncern about inadvertent copyright infringement appears, in many school districts, to limit the effective use of the Internet as an educational tool.'' For this reason, the Kerrey Commission report endorsed ''the U.S. Copyright Office proposal to convene education representatives and publisher stakeholders in order to build greater consensus and understanding of the 'fair use' doctrine and its application in web-based education. The goal should be agreement on guidelines for the appropriate digital use of information and consensus on the licensing of content not covered by the fair use doctrine.'' The TEACH Act will provide the impetus for this process to begin.

I appreciate that, generally speaking, copyright owners believe that current copyright laws are adequate to enable and foster legitimate distance learning activities. As the Copyright Office report noted, copyright owners are concerned that ''broadening the exemption would result in the loss of opportunities to license works for use in digital distance education'' and would increase the ''risk of unauthorized downstream uses of their works posed by digital technology.'' Based upon its review of distance learning, however, the Copyright Office concluded that updating section 110(2) in the manner proposed in the TEACH Act is ''advisable.'' I agree. At the same time we have made efforts to address the valid concerns of both the copyright owners and the educational and library community, and look forward to working with all interested stakeholders as this legislation is considered by the Judiciary Committee and the Congress.

Distance education is an important issue to both the chairman and to me, and to the people of our States. I commend him for scheduling a hearing on this important legislation for next week.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 45—HORNORING THE MEN AND WOMEN WHO SERVE THIS COUNTRY IN THE NATIONAL GUARD AND EXPRESSING CONDOLENCES OF THE UNITED STATES SENATE TO FAMILY AND FRIENDS OF THE 21 NATIONAL GUARDSMEN WHO PERISHED IN THE CRASH ON MARCH 3, 2001

Mr. BOND (for himself and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 45

Whereas on March 3, 2001, a tragic crash of a C-23 from the 171st Aviation Battalion of the Florida Army National Guard, carrying guardsmen from the 203rd Red Horse Unit of the Virginia Air National Guard took the lives of 21 guardsmen;

Whereas this unfortunate crash occurred during a routine training mission;

Whereas the National Guard is present in every state and four protectorates and is comprised of citizen-soldiers and airmen who continually support our active forces;

Whereas members of the Tragedy Assistance Program for Survivors were on site the day of the accident and generously rendered assistance to family members and friends; and

Whereas this is a somber reminder of the fact that the men and women in the United States Armed Forces put their lives on the line every day to protect this great Nation and that each citizen should forever be grateful for the sacrifices made by these men and women: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the contributions of the 21 National Guardsmen who made the ultimate sacrifice to their Nation on March 3, 2001;

(2) expresses deep and heartfelt condolences to the families and friends of the crash victims for this tragic loss;

(3) expresses appreciation for the members of the Tragedy Assistance Program for Survivors for their continued support to surviving family members; and

(4) honors the men and women who serve this country through the National Guard and is grateful for everything that each guardsman gives to protect the United States of America.

Mr. LEAHY. Mr. President, sadly, I rise today to talk about the recent crash of a National Guard aircraft in flying over Georgia. Last Friday, 21 members of the National Guard lost their lives in a horrible plane crash. How does one understand the death of 21 soldiers and airmen who dedicated their time and energy to contribute to our nation's defense?

While there perhaps is no easy answer to this question, the patriotism and dedication of these men is without doubt. Nineteen served with the Virginia Air National Guard in the 203d Red Horse Unit. Three were of the 171st Aviation Battalion of the Florida Army National Guard. All come from a proud citizen-soldier tradition that dates back to the War of Independence.

This was a routine mission for the fated C–23 Sherpa. With the Florida Guardsmen at the controls, the plane took off on Friday morning, headed for Virginia. Its passengers had just completed their two-weeks of annual training in Georgia, where they had honed their already refined construction abilities. They were heading back to their families and the civilian jobs. Alas, those reunions were never to occur.

It is a great loss whenever a member of the armed services gives his or her life in the lien of duty. But perhaps because these men came straight out of local communities, because they were juggling the demands of work and family along with their national service, we feel the losses like these especially deeply. Their departure reminds us that our friends, colleagues, and neighbors in the National Guard make sacrifices every time they report for duty. They leave the comfort of their homes for the rigors of service. It is a sacrifice that is worthy of honor and recognition, but often goes unnoticed until they make the ultimate sacrifice.

With that in mind, I join with my colleague Senator KIT BOND in introducing a resolution that honors their service and expresses our heartfelt condolences to the families of the victims.

SENATE RESOLUTION 46—AUTHORIZING EXPENDITURES BY THE SENATE COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL submitted the following resolution; from the Committee on Indian Affairs; which was referred to the Committee on Rules and Administration:

S. RES. 46

Resolved, That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, and making investigations as authorized by paragraphs 1 and