any perceived retaliation and allowing the company a reasonable opportunity to correct it before quitting and asserting a constructive discharge. (Note: If there is any chance that the decision might be made in the future to discharge the employee for making the report—e.g., if the company concludes that the allegations were not made in good faith—then this assurance probably should not be given, at least until later when (if) the company is satisfied that the employee was not acting in bad faith or otherwise improperly.)

3. The memo should contain language that conveys that the other terms of her employment—specifically, its at-will status—remains unchanged. This is to avoid any future claim that the understandings surrounding the transfer constitute a contractual obligation of some sort.

4. The new position, as we discussed, should have responsibilities and compensation comparable to her current one, to avoid any claim of constructive discharge.

5. As we discussed, to the extent practicable, the fact that she made the report should be treated as confidential.

6. The individual or individuals who are implicated by her allegations should be advised to treat the matter confidentially and to use discretion regarding any comments to or about the complaining employee. They should be advised that she is not to be treated adversely in any way for having expressed her concerns.

7. You indicated that the officer in charge of the area to which the employee may be reassigned would probably need to be advised of the circumstances. I suggest he be advised at the same time that it is important that she not be treated adversely or differently because she made the report. And that the circumstances of the transfer are confidential and should not be shared with others.

You also asked that I include in this communication a summary of the possible risks associated with discharging (or constructively discharging) employees who report allegations of improper accounting practices:

1. Texas law does not currently protect corporate whistleblowers. The supreme court has twice declined to create a cause of action for whistleblowers who are discharged; however, there were special factors present in both cases that weighed against the plaintiffs and the court implied that it might reach a different conclusion under other circumstances.

2. Regardless of the whistleblower issue, there is often a risk of a Sabine Pilot claim (i.e., allegation of discharge for refusing to participate in an illegal act). Whistleblower cases in Texas commonly are pled or repled as Sabine Pilot claims—it is often an easy leap for the plaintiff to make if she had any involvement in or duties relating to the alleged improper conduct. For example, some cases say that if an employee's duties involve recording accounting data that she knows to be misleading onto records that are eventually relied on by others in preparing reports to be submitted to a federal agency (e.g., SEC, IRS, etc.), then the employee can be subject to criminal prosecution even tho she did not originated the misleading data and does not prepare the actual document submitted to the government. Under such circumstances, if the employee alleges that she was discharged for refusing to record (or continuing the practice of recording) the allegedly misleading data, then she has stated a claim under the Sabine Pilot doctrine.

3. As we discussed, there are a myriad of problems associated with Sabine Pilot claims, regardless of their merits, that involve allegations of illegal accounting or related practices. One is that the company's accounting practices and books and records are fair game during discovery—the opposition typically will request production of volumes of sensitive material. Another problem is that because accounting practices often involve judgments in gray areas, rather than non-judgmental applications of black-letter rules, there are often genuine disputes over whether a company's practice or a specific report was materially misleading or complied with some statutory or regulatory requirements. Third, these are typically jury cases—that means they are decided by lay persons when the legal compliance issues are often confusing even to the lawyers and experts. Fourth, because of the above factors, they are very expensive and time consuming to litigate.

4. In addition to the risk of a wrongful discharge claim, there is the risk that the discharged employee will seek to convince some government oversight agency (e.g., IRS, SEC, etc.) that the corporation has engaged in materially misleading reporting or is otherwise non-compliant. As with wrongful discharge claims, this can create problems even tho the allegations have no merit whatsoever.

These are, of course, very general comments. I will be happy to discuss them in greater detail at your convenience.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2995. Mr. CRAIG (for himself, Ms. LANDRIEU, Mr. MURKOWSKI, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 2996. Mr. MURKOWSKI (for himself and Mr. DASCHLE) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 2997. Mr. LEVIN (for himself, Mr. BOND, Ms. STABENOW, and Ms. MIKULSKI) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

TEXT OF AMENDMENTS

SA 2995. Mr. CRAIG (for himself, Ms. LANDRIEU, Mr. MURKOWSKI, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place in the Amendment, insert the following:

SEC. . NUCLEAR POWER 2010.

(a) DEFINITIONS.—In this section:

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

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

(3) DIRECTOR.—The term ''Director'' means the Director of the Office of Nuclear Energy Science and Technology of the Department of Energy.

(4) PROGRAM.—The term ''Program'' means the Nuclear Power 2010 Program.

(b) ESTABLISHMENT.—The Secretary shall carry out a program, to be managed by the Director.

(c) PURPOSE.—The program shall aggressively pursue those activities that will result in regulatory approvals and design completion in a phased approach, with joint government/industry cost sharing, which would allow for the construction and startup of new nuclear plants in the United States by 2010.

(d) ACTIVITIES.—In carrying out the program, the Director shall—

(1) issue a solicitation to industry seeking proposals from joint venture project teams comprised of reactor vendors and power generation companies to participate in the Nuclear Power 2010 program;

(2) seek innovative business arrangements, such as consortia among designers, constructors, nuclear steam supply systems and major equipment suppliers, and plant owner/operators, with strong and common incentives to build and operate new plants in the United States;

(3) conduct the Nuclear Power 2010 program consistent with the findings of A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010 issued by the Near-Term Deployment Working Group of the Nuclear Energy Research Advisory Committee of the Department of Energy;

(4) rely upon the expertise and capabilities of the Department of Energy national laboratories and sites in the areas of advanced nuclear fuel cycles and fuels testing, giving consideration to existing lead laboratory designations and the unique capabilities and facilities available at each national laboratory and site;

(5) pursue deployment of both water-cooled and gas-cooled reactor designs on a dual track basis that will provide maximum potential for the success of both;

(6) include participation of international collaborators in research and design efforts where beneficial; and

(7) seek to accomplish the essential regulatory and technical work, both generic and design-specific, to make possible new nuclear plants within this decade.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section such sums as are necessary for fiscal year 2003 and for each fiscal year thereafter.

SA 2996. Mr. MURKOWSKI (for himself and Mr. DASCHLE) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 417) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place insert the following:

TITLE —RURAL AND REMOTE COMMUNITY FAIRNESS ACT

SEC. 01.—This Title may be cited as the ''The Rural and Remote Community Fairness Act.''.

Subtitle A—Rural and Remote Community Development Block Grants

SEC. 02.—The Housing and Community Development Act of 1974 (Public Law 93–383) is amended by inserting at the end the following new title:

''TITLE IX—RURAL AND REMOTE COMMUNITY DEVELOPMENT BLOCK GRANTS

''SEC. 901.(a) FINDINGS.—The Congress finds and declares that—

''(1) a modern infrastructure, including energy-efficient housing, electricity, telecommunications, bulk fuel, waste water and

potable water service, is a necessary ingredient of a modern society and development of a prosperous economy;

''(2) the Nation's rural and remote communities face critical social, economic and environmental problems, arising in significant measure from the high cost of infrastructure development in sparsely populated and remote areas, that are not adequately addressed by existing Federal assistance programs;

''(3) in the past, Federal assistance has been instrumental in establishing electric and other utility service in many developing regions of the Nations, and that Federal assistance continues to be appropriate to ensure that electric and other utility systems in rural areas conform with modern standards of safety, reliability, efficiency and environmental protection; and

''(4) the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable rural and remote communities as social, economic and political entities.

''(b) PURPOSE.—The purpose of this title is the development and maintenance of viable rural and remote communities through the provision of efficient housing, and reasonably priced and environmentally sound energy, water, waste water, and bulk fuel, telecommunications and utility services to those communities that do not have those services or who currently bear costs of those services that are significantly above the national average.

''SEC. 902. DEFINITIONS.—As used in this title:

''(a) The term 'unit of general local government' means any city, county, town, township, parish, village, borough (organized or unorganized) or other general purpose political subdivision of a State, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, the Virgin Islands, and American Samoa, a combination of such political subdivisions that is recognized by the Secretary, and the District of Columbia; or any other appropriate organization of citizens of a rural and remote community that the Secretary may identify.

''(b) The term 'population' means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

''(c) The term 'Native American group' means any Indian tribe, band group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Public Law 93–638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

''(d) The term 'Secretary' means the Secretary of Housing and Urban Development.

''(e) The term 'rural and remote community' means a unit of local general government or Native American group which is served by an electric utility that has 10,000 or less customers with an average retail cost per kilowatt hour of electricity that is equal to or greater than 150 percent of the average retail cost per kilowatt hour of electricity for all consumers in the United States, as determined by data provided by the Energy Information Administration of the Department of Energy.

''(f) The term 'alternative energy sources' includes non-traditional means of providing electrical energy, including, but not limited to, wind, solar, biomass, municipal solid waste, hydroelectric, geothermal and tidal power.

''(g) The term 'average retail cost per kilowatt hour of electricity' has the same meaning as 'average revenue per kilowatt hour of electricity' as defined by the Energy Information Administration of the Department of Energy.

''SEC. 903. AUTHORIZATIONS.—The Secretary is authorized to make grants to rural and remote communities to carry out activities in accordance with the provisions of the title. For purposes of assistance under section 906, there are authorized to be appropriated $100,000,000 for each of fiscal years 2003 through 2009.

''SEC. 904. STATEMENT OF ACTIVITIES AND REVIEW.

''(a) Prior to the receipt in any fiscal year of a grant under section 906 by any rural and remote community, the grantee shall have prepared and submitted to the Secretary a final statement of rural and remote community development objectives and projected use of funds.

''(b) In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee shall in a timely manner—

''(1) furnish citizens information concerning the amount of funds available for rural and remote community development activities and the range of activities that may be undertaken;

''(2) publish a proposed statement in such manner to afford affected citizens an opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee;

''(3) provide citizens with reasonable access to records regarding the past use of funds received under section 906 by the grantee; and

''(4) provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under section 906 from one eligible activity to another.

''The final statement shall be made available to the public, and a copy shall be furnished to the Secretary. Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same. Procedures required in this paragraph for the preparation and submission of such statement.

''(c) Each grantee shall submit to the Secretary, at a time determined by the Secretary, a performance and evaluation report, concerning the use of funds made available under section 906, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a) and to the requirements of subsection (b). The grantee's report shall indicate its programmatic accomplishments, the nature of and reasons for any changes in the grantee's program objectives, and indications of how the grantee would change its programs as a result of its experiences.

''(d) Any rural and remote community may retain any program income that is realized from any grant made by the secretary under section 906 if (1) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and (2) such unit of general local government has agreed that it will utilize the program income for eligible rural and remote community development activities in accordance with the provisions of this title; except that the Secretary may by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the subsection creates an unreasonable administrative burden on the rural and remote community.

''SEC. 905. ELIGIBLE ACTIVITIES.

''(a) Eligible activities assisted under this title may include only—

''(1) weatherization and other cost-effective energy-related repairs of homes and other buildings;

''(2) the acquisition, construction, repair, reconstruction, or installation of reliable and cost-efficient facilities for the generation, transmission or distribution of electricity, and telecommunications, for consumption in a rural and remote community or communities;

''(3) the acquisition, construction, repair, reconstruction, remediation or installation of facilities for the safe storage and efficient management of bulk fuel by rural and remote communities, and facilities for the distribution of such fuel to consumers in a rural or remote communities;

''(4) facilities and training to reduce costs of maintaining and operating generation, distribution or transmission systems to a rural and remote community or communities;

''(5) the institution of professional management and maintenance services for electricity generation transmission or distribution to a rural and remote community or communities;

''(6) the investigation of the feasibility of alternate energy sources for a rural and remote community or communities;

''(7) acquisition, construction, repair, reconstruction, operation, maintenance, or installation of facilities for water or waste water service;

''(8) the acquisition of disposition of real property (including air rights, water rights, and other interests therein) for eligible rural and remote community development activities; and

''(9) activities necessary to develop and implement a comprehensive rural and remote development plan, including payment of reasonable administrative costs related to planning and execution of rural and remote community development activities.

''(b) eligible activities may be undertaken either directly by the rural and remote community, or by the rural and remote community through local electric utilities.

''SEC. 906. ALLOCATION AND DISTRIBUTION OF FUNDS.—For each fiscal year, of the amount approved in an appropriation act under section 903 for grants in any year, the Secretary shall distribute to each rural and remote community which has filed a final statement of rural and remote community development objectives and projected use of funds under section 904, an amount which shall be allocated among the rural and remote communities that filed a final statement of rural and remote community development objectives and projected use of funds under section 904 proportionate to the percentage that the average retail price per kilowatt hour of electricity for all classes of consumers in the rural and remote community exceeds the national average retail price per kilowatt hour for electricity for all consumers in the United States, as determined by data provided by the Department of Energy's Energy Information Administration. In allocating funds under this section, the Secretary shall give special consideration to those rural and remote communities that increase economies of scale through consolidation of services, affiliation and regionalization of eligible activities under this title.

SEC. 907. REMENDIES FOR NONCOMPLIANCE.—The provisions of section 111 of the Housing and Community Development Act of 1974 shall apply to assistance distributed under this title.''.

Subtitle B—Rural and Remote Community Electrification Grants

SEC. 04.—After section 313(b) of the rural Electrification Act of 1936, add the following new subsection:

''(c) RURAL AND REMOTE COMMUNITY ELECTRIFICATION GRANTS.—The Secretary is authorized to provide grants to eligible borrowers under this Act for the purpose of increasing energy efficiency, lowering or stabilizing electric rates to end users, or providing or modernizing electric facilities in rural and remote communities.

''(d) For purposes of subsection (c), there is authorized to be appropriated $20,000,000 for each of fiscal years 2003–2009.''.

SEC. 06.—There is hereby authorized to be appropriated $5,000,000 for each of fiscal years 2003–2009 to the Denali commission established by Public Law 105–227, 42 U.S.C. 3121 for the purposes of funding the power cost equalization program.

Subtitle C—Rural Recovery Community Development Block Grants

SEC. 07.—The Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended by adding at the end the following:

''Sec. 123. Rural Recovery Community Development Block Grants.

''(a) FINDINGS; PURPOSE.—

''(1) FINDINGS.—Congress finds that—

''(A) a modern infrastructure, including affordable housing, wastewater and water service, and advanced technology capabilities is a necessary ingredient of a modern society and development of a prosperous economy with minimal environmental impacts;

''(B) the Nation's rural areas face critical social, economic, and environmental problems, arising in significant measure from the growing cost of infrastructure development in rural areas that suffer from low per capita income and high rates of outmigration and are not adequately addressed by existing Federal assistance programs; and

''(C) the future welfare of the National and the well-being of its citizens depend on the establishment and maintenance of viable rural areas as social, economic, and political entities.

''(2) PURPOSE.—The purpose of this section is to provide for the development and maintenance of viable rural areas through the provision of affordable housing and community development assistance to eligible units of general local government and eligible Native American groups in rural areas with excessively high rates of outmigration and low per capita income levels.

''(b) DEFINITIONS.—In this section:

''(1) ELIGIBLE UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'eligible unit of general local government' means a unit of general local government that is the governing body of a rural recovery area.

''(2) ELIGIBLE INDIAN TRIBE.—The term 'eligible Indian tribe' means the governing body of an Indian tribe that is located in a rural recovery area.

''(3) GRANTEE.—The term 'grantee' means an eligible unit of general local government or eligible Indian tribe that receives a grant under this section.

''(4) NATIVE AMERICAN GROUP.—The term 'Native American group' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

''(5) RURAL RECOVERY AREA.—The term 'rural recovery area' means any geographic area represented by a unit of general local government or a Native American group—

''(A) the borders of which are not adjacent to a metropolitan area;

''(B) in which—

''(i) the population outmigration level equals or exceeds 1 percent over the most recent five year period, as determined by the Secretary of Housing and Urban Development; and,

''(ii) the per capita income is less than that of the national nonmetropolitan average; and

''(C) that does not include a city with a population of more than 15,000.

''(6) UNIT OF GENERAL LOCAL GOVERNMENT.—

''(A) IN GENERAL.—The term 'unit of general local government' means any city, county, town, township, parish, village, borough (organized or unorganized), or other general purpose political subdivision of a State; Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions that, except as provided in section 106(d)(4), is recognized by the Secretary; and the District of Columbia.

''(B) OTHER ENTITIES INCLUDED.—The term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), community association, or other entity, that is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

''(c) GRANT AUTHORITY.—The Secretary may make grants in accordance with this section to eligible units of general local government, Native American groups and eligible Indian tribes that meet the requirements of subsection (d) to carry out eligible activities described in subsection (f).

''(d) ELIGIBILITY REQUIREMENTS.—

''(1) STATEMENT OF RURAL DEVELOPMENT OBJECTIVES.—In order to receive a grant under this section for a fiscal year, an eligible unit of general local government, Native American group or eligible Indian tribe—

''(A) shall—

''(i) publish a proposed statement of rural development objectives and a description of the proposed eligible activities described in subsection (f) for which the grant will be used; and

''(ii) afford residents of the rural recovery area served by the eligible unit of general local government, Native American groups or eligible Indian tribe with an opportunity to examine the contents of the proposed statement and the proposed eligible activities published under clause (i), and to submit comments to the eligible unit of general local government, Native American group or eligible Indian tribe, as applicable, on the proposed statement and the proposed eligible activities, and the overall community development performance of the eligible unit of general local government, Native American groups or eligible Indian tribe, as applicable; and

''(B) based on any comments received under subparagraph (A)(ii), prepare and submit to the Secretary—

''(i) a final statement of rural development objectives;

''(ii) a description of the eligible activities described in subsection (f) for which a grant received under this section will be used; and

''(iii) a certification that the eligible unit of general local government, Native American groups or eligible Indian tribe, as applicable, will comply with the requirements of paragraph (2).

''(2) PUBLIC NOTICE AND COMMENT.—In order to enhance public accountability and facilitate the coordination of activities among different levels of government, an eligible unit of general local government, Native American groups or eligible Indian tribe that receives a grant under this section shall, as soon as practicable after such receipt, provide the residents of the rural recovery area served by the eligible unit of general local government, Native American groups or eligible Indian tribe, as applicable, with—

''(A) a copy of the final statement submitted under paragraph (1)(B);

''(B) information concerning the amount made available under this section and the eligible activities to be undertaken with that amount;

''(C) reasonable access to records regarding the use of any amounts received by the eligible unit of general local government, Native American groups or eligible Indian tribe under this section in any preceding fiscal year; and

''(D) reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of amounts received under this section from one eligible activity to another.

''(e) DISTRIBUTION OF GRANTS.—

''(1) IN GENERAL.—In each fiscal year, the Secretary shall distribute to each eligible unit of general local government, Native American groups and eligible Indian tribe that meets the requirements of subsection (d)(1) a grant in an amount described in paragraph (2).

''(2) AMOUNT.—Of the total amount made available to carry out this section in each fiscal year, the Secretary shall distribute to each grantee the amount equal to the greater of—

''(A) the pro rata share of the grantee, as determined by the Secretary, based on the combined annual population outmigration level (as determined by the Secretary of Housing and Urban Development) and the per capita income for the rural recovery area served by the grantee; or

''(B) $200,000.

''(f) ELIGIBLE ACTIVITIES.—Each grantee shall use amounts received under this section for one or more of the following eligible activities, which may be undertaken either directly by the grantee, or by any local economic development corporation, regional planning district, nonprofit community development corporation, or statewide development organization authorized by the grantee:

''(1) the acquisition, construction, repair, reconstruction, operation, maintenance, or installation of facilities for water and wastewater service or any other infrastructure needs determined to be critical to the further development or improvement of a designated industrial park;

''(2) the acquisition or disposition of real property (including air rights, water rights, and other interests therein) for rural community development activities;

''(3) the development of telecommunications infrastructure within a designated industrial park that encourages high technology business development in rural areas;

''(4) activities necessary to develop and implement a comprehensive rural development plan, including payment of reasonable administrative costs related to planning and execution of rural development activities; or

''(5) affordable housing initiatives.

''(g) PERFORMANCE AND EVALUATION REPORT.—

''(1) IN GENERAL.—Each grantee shall annually submit to the Secretary a performance and evaluation report, concerning the use of amounts received under this section.

''(21) CONTENTS.—Each report submitted under paragraph (1) shall include a description of—

''(A) the eligible activities carried out by the grantee with amounts received under this section, and the degree to which the grantee has achieved the rural development objectives included in the final statement submitted under subsection (d)(1);

''(B) the nature of and reasons for any change in the rural development objectives or the eligible activities of the grantee after submission of the final statement under subsection (d)(1); and

''(C) any manner in which the grantee would change the rural development objectives of the grantee as a result of the experience of the grantee in administering amounts received under this section.

''(h) RETENTION OF INCOME.—A grantee may retain any income that is realized from the grant, if—

''(1) the income was realized after the initial disbursement of amounts to the grantee under this section; and

''(2) the—

''(A) grantee agrees to utilize the income for 1 or more eligible activities; or

''(B) amount of the income is determined by the Secretary to be so small that compliance with subparagraph (A) would create an unreasonable administrative burden on the grantee.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriate to carry out this section $100,000,000 for each of fiscal years 2003 through 2009.''.

SA 2997. Mr. LEVIN (for himself, Mr. BOND, Ms. STABENOW, and Ms. MIKULSKI) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

In title VIII, strike the heading for subtitle A and all that follows through section 811 and insert the following:

Subtitle A—CAFE Standards, Alternative Fuels, and Advanced Technology

SEC. 801. INCREASED FUEL ECONOMY STANDARDS.

(a) REQUIREMENT FOR NEW REGULATIONS.—

(1) IN GENERAL.—The Secretary of Transportation shall issue, under section 32902 of title 49, United States Code, new regulations setting forth increased average fuel economy standards for automobiles that are determined on the basis of the maximum feasible average fuel economy levels for the automobiles, taking into consideration the matters set forth in subsection (f) of such section.

(2) TIME FOR ISSUING REGULATIONS.—

(A) NON-PASSENGER AUTOMOBILES.—For non-passenger automobiles, the Secretary of Transportation shall issue the final regulations not later than 15 months after the date of the enactment of this Act.

(B) PASSENGER AUTOMOBILES.—For passenger automobiles, the Secretary of Transportation shall issue—

(i) the proposed regulations not later than 180 days after the date of the enactment of this Act; and

(ii) the final regulations not later than two years after that date.

(b) PHASED INCREASES.—The regulations issued pursuant to subsection (a) shall specify standards that take effect successively over several vehicle model years not exceeding 15 vehicle model years.

(c) CLARIFICATION OF AUTHORITY TO AMEND PASSENGER AUTOMOBILE STANDARD.—Section 32902(b) of title 49, United States Code, is amended by inserting before the period at the end the following: ''or such other number as the Secretary prescribes under subsection (c)''.

(d) ENVIRONMENTAL ASSESSMENT.—When issuing final regulations setting forth increased average fuel economy standards under this section, the Secretary of Transportation shall also issue an environmental assessment of the effects of the implementation of the increased standards on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Transportation for fiscal year 2003, to remain available until expended, $2,000,000 to carry out this section.

SEC. 802. EXPEDITED PROCEDURES FOR CONGRESSIONAL INCREASE IN FUEL ECONOMY STANDARDS.

(a) CONDITION FOR APPLICABILITY.—If the Secretary of Transportation fails to issue final regulations with respect to non-passenger automobiles under section 801, or fails to issue final regulations with respect to passenger automobiles under such section, on or before the date by which such final regulations are required by such section to be issued, respectively, then this section shall apply with respect to a bill described in subsection (b).

(b) BILL.—A bill referred to in this subsection is a bill that satisfies the following requirements:

(1) INTRODUCTION.—The bill is introduced by one or more Members of Congress not later than 60 days after the date referred to in subsection (a).

(2) TITLE.—The title of the bill is as follows: ''A bill to establish new average fuel economy standards for certain motor vehicles.''.

(3) TEXT.—The bill provides after the enacting clause only the text specified in subparagraph (A) or (B) or any provision described in subparagraph (C), as follows:

(A) NON-PASSENGER AUTOMOBILES.—In the case of a bill relating to a failure timely to issue final regulations relating to non-passenger automobiles, the following text:

''That, section 32902 of title 49, United States Code, is amended by adding at the end the following new subsection:

'''(_) NON-PASSENGER AUTOMOBILES.—The average fuel economy standard for non-passenger automobiles manufactured by a manufacturer in a model year after model year ____ shall be ____ miles per gallon.''', the first blank space being filled in with a subsection designation, the second blank space being filled in with the number of a year, and the third blank space being filled in with a number.

(B) PASSENGER AUTOMOBILES.—In the case of a bill relating to a failure timely to issue final regulations relating to passenger automobiles, the following text:

''That, section 32902(b) of title 49, United States Code, is amended to read as follows:

'''(b) PASSENGER AUTOMOBILES.—Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year ____ shall be ____ miles per gallon.''', the first blank space being filled in with the number of a year and the second blank space being filled in with a number.

(C) SUBSTITUTE TEXT.—Any text substituted by an amendment that is in order under subsection (c)(3).

(c) EXPEDITED PROCEDURES.—A bill described in subsection (b) shall be considered in a House of Congress in accordance with the procedures provided for the consideration of joint resolutions in paragraphs (3) through (8) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473; 98 Stat. 1936), with the following exceptions:

(1) REFERENCES TO RESOLUTION.—The references in such paragraphs to a resolution shall be deemed to refer to the bill described in subsection (b).

(2) COMMITTEES OF JURISDICTION.—The committees to which the bill is referred under this subsection shall—

(A) in the Senate, be the Committee on Commerce, Science, and Transportation; and

(B) in the House of Representatives, be the Committee on Energy and Commerce.

(3) AMENDMENTS.—

(A) AMENDMENTS IN ORDER.—Only four amendments to the bill are in order in each House, as follows:

(i) Two amendments proposed by the majority leader of that House.

(ii) Two amendments proposed by the minority leader of that House.

(B) FORM AND CONTENT.—To be in order under subparagraph (A), an amendment shall propose to strike all after the enacting clause and substitute text that only includes the same text as is proposed to be stricken except for one or more different numbers in the text.

(C) DEBATE, ET CETERA.—Subparagraph (B) of section 8066(c)(5) of the Department of Defense Appropriations Act, 1985 (98 Stat. 1936) shall apply to the consideration of each amendment proposed pursuant to subparagraph (A) of this paragraph in the same manner as such subparagraph (B) applies to debatable motions.

SEC. 803. REVISED CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.

Section 32902(f) of title 49, United States Code, is amended to read as follows:

''(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

''(1) Technological feasibility.

''(2) Economic practicability.

''(3) The effect of other motor vehicle standards of the Government on fuel economy.

''(4) The need of the United States to conserve energy.

''(5) The desirability of reducing United States dependence on imported oil.

''(6) The effects of the average fuel economy standards on motor vehicle and passenger safety.

''(7) The effects of increased fuel economy on air quality.

''(8) The adverse effects of average fuel economy standards on the relative competitiveness of manufacturers.

''(9) The effects of compliance with average fuel economy standards on levels of employment in the United States.

''(10) The cost and lead time necessary for the introduction of the necessary new technologies.

''(11) The potential for advanced technology vehicles, such as hybrid and fuel cell vehicles, to contribute to the achievement of significant reductions in fuel consumption.

''(12) The extent to which the necessity for vehicle manufacturers to incur near-term costs to comply with the average fuel economy standards adversely affects the availability of resources for the development of advanced technology for the propulsion of motor vehicles.

''(13) The report of the National Research Council that is entitled 'Effectiveness and Impact of Corporate Average Fuel Economy Standards', issued in January 2002.''.

SEC. 804. EXTENSION OF MAXIMUM FUEL ECONOMY INCREASE FOR ALTERNATIVE FUELED VEHICLES.

Section 32906(a)(1) of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking ''1993–2004'' and inserting ''1993 through 2008''; and

(2) in subparagraph (B), by striking ''2005–2008'' and inserting ''2009 through 2012''.

SEC. 805. PROCUREMENT OF ALTERNATIVE FUELED AND HYBRID LIGHT DUTY TRUCKS.

(a) VEHICLE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—

(1) HYBRID VEHICLES.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by or for each agency fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

(2) WAIVER AUTHORITY.—The head of an agency, in consultation with the Administrator, may waive the applicability of the policy regarding the procurement of hybrid vehicles in paragraph (1) to that agency to the extent that the head of that agency determines necessary—

(A) to meet specific requirements of the agency for capabilities of light duty trucks;

(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government;

(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles; or

(D) to avoid the necessity of procuring a hybrid vehicle for the agency when each of the hybrid vehicles available for meeting the requirements of the agency has a cost to the United States that exceeds the costs of comparable nonhybrid vehicles by a factor that is significantly higher than the difference between—

(i) the real cost of the hybrid vehicle to retail purchasers, taking into account the benefit of any tax incentives available to retail purchasers for the purchase of the hybrid vehicle; and

(ii) the costs of the comparable nonhybrid vehicles to retail purchasers.

(3) APPLICABILITY TO PROCUREMENTS AFTER FISCAL YEAR 2004.—This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—

(1) LIGHT DUTY TRUCKS.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in fiscal years after fiscal year 2004 for the fleets of light duty vehicles of the agency to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies—

(A) five percent of the total number of such trucks that are procured in each of fiscal years 2005 and 2006 are alternative fueled vehicles or hybrid vehicles; and

(B) ten percent of the total number of such trucks that are procured in each fiscal year after fiscal year 2006 are alternative fueled vehicles or hybrid vehicles.

(2) COUNTING OF TRUCKS.—Light duty trucks acquired for an agency of the executive branch that are counted to comply with section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) for a fiscal year shall be counted to determine the total number of light duty trucks procured for that agency for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

(c) DEFINITIONS.—In this section:

(1) HYBRID VEHICLE.—The term ''hybrid vehicle'' means—

(A) a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

(i) an internal combustion or heat engine using combustible fuel; and

(ii) a rechargeable energy storage system; and

(B) any other vehicle that is defined as a hybrid vehicle in regulations prescribed by the Secretary of Energy for the administration of title III of the Energy Policy Act of 1992.

(2) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(d) INAPPLICABILITY TO DEPARTMENT OF DEFENSE.—This section does not apply to the Department of Defense, which is subject to comparable requirements under section 318 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1055; 10 U.S.C. 2302 note).

SEC. 806. USE OF ALTERNATIVE FUELS.

(a) EXCLUSIVE USE OF ALTERNATIVE FUELS IN DUAL FUELED VEHICLES.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that, not later than January 1, 2009, the fuel actually used in the fleet of dual fueled vehicles used by the agency is an alternative fuel.

(b) WAIVER AUTHORITY.—

(1) CAPABILITY WAIVER.—

(A) AUTHORITY.—If the Secretary of Transportation determines that not all of the dual fueled vehicles can operate on alternative fuels at all times, the Secretary may waive the requirement of subsection (a) in part, but only to the extent that—

(i) not later than January 1, 2009, not less than 50 percent of the total annual volume of fuel used in the dual fueled vehicles shall be alternative fuels; and

(ii) not later than January 1, 2011, not less than 75 percent of the total annual volume of fuel used in the dual fueled vehicles shall be alternative fuels.

(B) EXPIRATION.—In no case may a waiver under subparagraph (A) remain in effect after December 31, 2012.

(2) REGIONAL FUEL AVAILABILITY WAIVER.—The Secretary may waive the applicability of the requirement of subsection (a) to vehicles used by an agency in a particular geographic area where the alternative fuel otherwise required to be used in the vehicles is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency.

(c) DEFINITIONS.—In this section:

(1) ALTERNATIVE FUEL.—The term ''alternative fuel'' has the meaning given that term in section 32901(a)(1) of title 49, United States Code.

(2) DUAL FUELED VEHICLE.—The term ''dual fueled vehicle'' has the meaning given the term ''dual fueled automobile'' in section 32901(a)(8) of title 49, United States Code.

(3) FLEET.—The term ''fleet'', with respect to dual fueled vehicles, has the meaning that is given that term with respect to light duty motor vehicles in section 301(9) of the Energy Policy Act of 1992 (42 U.S.C. 13211(9)).

SEC. 807. HYBRID ELECTRIC AND FUEL CELL VEHICLES.

(a) EXPANSION OF SCOPE.—The Secretary of Energy shall expand the research and development program of the Department of Energy on advanced technologies for improving the environmental cleanliness of vehicles to emphasize research and development on the following:

(1) Fuel cells, including—

(A) high temperature membranes for fuel cells; and

(B) fuel cell auxiliary power systems.

(2) Hydrogen storage.

(3) Advanced vehicle engine and emission control systems.

(4) Advanced batteries and power electronics for hybrid vehicles.

(5) Advanced fuels.

(6) Advanced materials.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Energy for fiscal year 2003, the amount of $225,000,000 for carrying out the expanded research and development program provided for under this section.

SEC. 808. DIESEL FUELED VEHICLES.

(a) DIESEL COMBUSTION AND AFTER TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate research and development directed toward the improvement of diesel combustion and after treatment technologies for use in diesel fueled motor vehicles.

(b) GOAL.—

(1) COMPLIANCE WITH TIER 2 EMISSION STANDARDS BY 2010.—The Secretary shall carry out subsection (a) with a view to developing and demonstrating diesel technology meeting tier 2 emission standards not later than 2010.

(2) TIER 2 EMISSION STANDARDS DEFINED.—In this subsection, the term ''tier 2 emission standards'' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on February 10, 2000, under sections 202 and 211 of the Clean Air Act to apply to passenger cars, light trucks, and larger passenger vehicles of model years after the 2003 vehicle model year.

SEC. 809. FUEL CELL DEMONSTRATION.

(a) PROGRAM REQUIRED.—The Secretary of Energy and the Secretary of Defense shall jointly carry out a program to demonstrate—

(1) fuel cell technologies developed in the PNGV and Freedom Car programs;

(2) fuel cell technologies developed in research and development programs of the Department of Defense; and

(3) follow-on fuel cell technologies.

(b) PURPOSES OF PROGRAM.—The purposes of the program are to identify and support technological advances that are necessary to achieve accelerated availability of fuel cell technology for use both for nonmilitary and military purposes.

(c) COOPERATION WITH INDUSTRY.—

(1) IN GENERAL.—The demonstration program shall be carried out in cooperation with industry, including the automobile manufacturing industry and the automotive systems and component suppliers industry.

(2) COST SHARING.—The Secretary of Energy and the Secretary of Defense shall provide for industry to bear, in cash or in kind, at least one-half of the total cost of carrying out the demonstration program.

(d) DEFINITIONS.—In this section:

(1) PNGV PROGRAM.—The term ''PNGV program'' means the Partnership for a New Generation of Vehicles, a cooperative program engaged in by the Departments of Commerce, Energy, Transportation, and Defense, the Environmental Protection Agency, the National Science Foundation, and the National Aeronautics and Space Administration with the automotive industry for the purpose of developing a new generation of vehicles with capabilities resulting in significantly improved fuel efficiency together with low emissions without compromising the safety, performance, affordability, or utility of the vehicles.

(2) FREEDOM CAR PROGRAM.—The term ''Freedom Car program'' means a cooperative research program engaged in by the Department of Energy with the United States Council on Automotive Research as a follow-on to the PNGV program.

SEC. 810. BUS REPLACEMENT.

(a) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall carry out a study to determine how best to provide for converting the composition of the fleets of buses in metropolitan areas and school systems from buses utilizing current diesel technology to—

(1) buses that draw propulsion from on-board fuel cells;

(2) buses that are hybrid electric vehicles;

(3) buses that are fueled by clean-burning fuels, such as renewable fuels (including agriculture-based biodiesel fuels), natural gas, and ultra-low sulphur diesel;

(4) buses that are powered by clean diesel engines: or

(5) an assortment of buses described in paragraphs (1), (2), (3), and (4).

(b) REPORT.—

(1) REQUIREMENT.—The Secretary of Transportation shall submit a report on the results of the study on bus fleet conversions under subsection (a) to Congress.

(2) CONTENT.—The report on bus fleet conversions shall include the following:

(A) An assessment of effectuating conversions by the following means:

(i) Replacement of buses.

(ii) Replacement of power and propulsion systems in buses utilizing current diesel technology.

(iii) Other means.

(B) Feasible schedules for carrying out the conversions.

(C) Estimated costs of carrying out the conversions.

(D) An assessment of the benefits of the conversions in terms of emissions control and reduction of fuel consumption.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, March 14, 2002, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on the President's budget request for Indian programs for fiscal year 2003.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 12, 2002, at 9:30 a.m., in closed session to receive a classified briefing on current military operations.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, March 12, 2002, at 10 a.m. to conduct an oversight hearing on ''The U.S. Economic Outlook.''

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, March 12, 2002 at 2:30 p.m. to hold a hearing to receive testimony on the proposed First Responder Initiative in President Bush's FY03 budget. The hearing will be held in SD–406.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, March 12, 2002 at 10 a.m. to hear testimony on ''Welfare Reform: What Have We Learned?''

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, March 12, 2002 immediately following the first roll call vote of the day for a business meeting to consider the nominations of: (1) Louis Kincannon to be Director of the Census, and (2) Jeanette Clark to be an Associate Judge of the Superior Court of the District of Columbia.

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

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate for a vote regarding the Nomination of Melanie R. Sabelhaus to be Deputy Administrator of the U.S. Small Business Administration, on Tuesday, March 12, 2002, immediately following the first vote of the Senate.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 12, 2002, at 2:30 p.m., in open and possibly closed session to receive testimony on special operations capabilities, operational requirements, and technology acquisition, in review of the defense authorization request for fiscal year 2003.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION AND FEDERAL SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs' Subcommittee on International Security, Proliferation and Federal Services be authorized to meet on Tuesday, March 12, 2002, at 2:30 p.m. for a hearing regarding ''Critical Skills for National Security and the The Homeland Security Federal Workforce Act (S. 1800).''

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON PUBLIC HEALTH

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor and Pensions, Subcommittee on Public Healths, be authorized to meet for a hearing on The Health Care Crisis of the Uninsured: What are the Solutions during the session of the Senate on Tuesday, March 12, 2002, at 10 a.m.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON SUPERFUND, TOXICS, RISK, AND WASTE MANAGEMENT

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works, Subcommittee on Superfund, Toxics, Risk, and Waste Management be authorized to meet on Tuesday, March 12, 2002 at 10 a.m. to hold a hearing to receive testimony on environmental enforcement. The hearing will be held in SD–406.

The PRESIDING OFFICER. Without objection it is so ordered.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94–201, as amended by Public Law 105–275, appoints Dennis Holub, of South Dakota, as a member of the Board of Trustees of the American Folklife Center of the Library of Congress.

ORDERS FOR WEDNESDAY, MARCH 13, 2002

Mr. LEVIN. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9 a.m., Wednesday, March, 13; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 9:30 a.m., with the time under the control of Senator ALLEN; further, at 9:30 a.m., the Senate resume consideration of the energy reform bill, for debate only in relation to ethanol until 11:30 a.m., with the time equally divided between Senators NELSON of Nebraska and BOND or their designees; further, that at 11:30 a.m., the Senate proceed under the previous order.

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

PROGRAM

Mr. LEVIN. The next rollcall vote will occur at approximately 11:50 a.m. in relation to the Levin CAFE amendment.