

Once again, it gives me great pleasure to recognize and honor today's celebration on behalf of the millions of disabled Americans who may continue to benefit throughout this country.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 10:03 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4775) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.

#### ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

H.R. 1209. An act to amend the Immigration and Nationality Act to determine whether an alien is a child, for purposes of classification as an immediate relative, based on the age of the alien on the date the classification petition with respect to the alien is filed, and for other purposes.

H.R. 2175. An act to protect infants who are born alive.

H.R. 3487. An act to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing.

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

At 11:08 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3479. An act to expand aviation capacity.

H.R. 3609. An act to amend title 49, United States Code, to enhance the security and safety of pipelines.

H.R. 4547. An act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense and to prescribe military personnel strengths for fiscal year 2003.

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3479. An act to expand aviation capacity.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Appropriations, without amendment:

S. 2778: An original bill making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107-218).

By Mr. LEAHY, from the Committee on Appropriations, without amendment:

S. 2779: An original bill making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107-219).

By Mr. REID, from the Committee on Appropriations, without amendment:

S. 2784: An original bill making appropriations for energy and water development for the fiscal year ending September 30, 2003, and for other purposes. (Rept. No. 107-220).

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LIEBERMAN for the Committee on Governmental Affairs.

James E. Boasberg, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

\*Mark W. Everson, of Texas, to be Deputy Director for Management, Office of Management and Budget.

\*Michael D. Brown, of Colorado, to be Deputy Director of the Federal Emergency Management Agency.

(\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CRAIG:

S. 2777. A bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the treatment of qualified public educational facility bonds as exempt facility bonds; to the Committee on Finance.

By Mr. HOLLINGS:

S. 2778. An original bill making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2003, and for other purposes; from

the Committee on Appropriations; placed on the calendar.

By Mr. LEAHY:

S. 2779. An original bill making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. FEINGOLD:

S. 2780. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

By Mr. REID (for himself, Mr. BURNS, and Mr. ENSIGN):

S. 2781. A bill to amend the Petroleum Marketing Practices Act to extend certain protections to franchised refiners or distributors of lubricating oil; to the Committee on Energy and Natural Resources.

By Mr. SMITH of Oregon (for himself, Mr. REID, Mr. WYDEN, Mr. ENSIGN, Mrs. CLINTON, Mr. SCHUMER, Mrs. BOXER, and Mrs. FEINSTEIN):

S. 2782. A bill to amend part C of title XVIII of the Social Security Act to consolidate and restate the Federal laws relating to the social health maintenance organization projects, to make such projects permanent, to require the Medicare Payment Advisory Commission to conduct a study on ways to expand such projects, and for other purposes; to the Committee on Finance.

By Mrs. CARNAHAN:

S. 2783. A bill to amend the Internal Revenue Code of 1986 to restore the tax exempt status of death gratuity payments to members of the uniformed services; to the Committee on Finance.

By Mr. REID:

S. 2784. An original bill making appropriations for energy and water development for the fiscal year ending September 30, 2003, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. JOHNSON (for himself and Mr. DURBIN):

S. 2785. A bill to amend the Internal Revenue Code of 1986 to provide a tax filing delay for members of the Armed Forces serving in a contingency operation; to the Committee on Finance.

By Mr. ALLARD:

S. 2786. A bill to provide a cost-sharing requirement for the construction of the Arkansas Valley Conduit in the State of Colorado; to the Committee on Energy and Natural Resources.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 2787. A bill to amend the Internal Revenue Code of 1986 to exempt certain United States international ports from the harbor maintenance tax; to the Committee on Finance.

By Mr. DASCHLE:

S. 2788. A bill to revise the boundary of the Wind Cave National Park in the State of South Dakota; to the Committee on Energy and Natural Resources.

By Mr. HARKIN:

S. 2789. A bill to expand the eligibility for membership in veterans organizations; to the Committee on Finance.

#### ADDITIONAL COSPONSORS

S. 121

At the request of Mrs. FEINSTEIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 121, a bill to establish an Office of Children's Services within the Department of Justice to coordinate

and implement Government actions involving unaccompanied alien children, and for other purposes.

S. 281

At the request of Mr. HAGEL, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 281, a bill to authorize the design and construction of a temporary education center at the Vietnam Veterans Memorial.

S. 454

At the request of Mr. BINGAMAN, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 454, a bill to provide permanent funding for the Bureau of Land Management Payment in Lieu of Taxes program and for other purposes.

S. 572

At the request of Mr. CHAFEE, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 572, a bill to amend title XIX of the Social Security Act to extend modifications to DSH allotments provided under the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

S. 882

At the request of Ms. MIKULSKI, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 882, a bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, subject to a reduction of 50 percent if the recipient dies during the first 15 days of such month, and for other purposes.

S. 913

At the request of Ms. SNOWE, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of all oral anticancer drugs.

S. 1777

At the request of Mrs. CLINTON, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1777, a bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes.

S. 2188

At the request of Mr. BREAUX, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2188, a bill to require the Consumer Product Safety Commission to amend its flammability standards for children's sleepwear under the Flammable Fabrics Act.

At the request of Mr. SMITH of New Hampshire, his name was added as a cosponsor of S. 2188, *supra*.

S. 2211

At the request of Mr. HUTCHINSON, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2211, a bill to amend title 10, United

States Code, to apply the additional retired pay percentage for extraordinary heroism to the computation of the retired pay of enlisted members of the Armed Forces who are retired for any reason, and for other purposes.

S. 2215

At the request of Mrs. BOXER, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

S. 2221

At the request of Mr. ROCKEFELLER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2221, a bill to temporarily increase the Federal medical assistance percentage for the Medicaid program.

S. 2233

At the request of Mr. THOMAS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2233, a bill to amend title XVIII of the Social Security Act to establish a Medicare subvention demonstration project for veterans.

S. 2466

At the request of Mr. KERRY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2466, a bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes.

S. 2531

At the request of Ms. COLLINS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2531, a bill to amend the Public Health Service Act to authorize the Commissioner of Food and Drugs to conduct oversight of any entity engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue or human tissue-based products.

S. 2592

At the request of Ms. LANDRIEU, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 2592, a bill to provide affordable housing opportunities for families that are headed by grandparents and other relatives of children, and for other purposes.

S. 2596

At the request of Mrs. BOXER, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 2596, a bill to amend the Internal Revenue Code of 1986 to extend the financing of the Superfund.

S. 2602

At the request of Mrs. CLINTON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2602, a bill to amend title 38, United

States Code, to provide that remarriage of the surviving spouse of a veteran after age 55 shall not result in termination of dependency and indemnity compensation.

S. 2683

At the request of Mr. HUTCHINSON, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 2683, a bill to amend the Internal Revenue Code of 1986 to clarify that church employees are eligible for the exclusion for qualified tuition reduction programs of charitable educational organizations.

S. 2734

At the request of Mr. KERRY, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2748

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of S. 2748, a bill to authorize the formulation of State and regional emergency telehealth network testbeds and, within the Department of Defense, a telehealth task force.

S. 2753

At the request of Mr. KERRY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2753, a bill to provide for a Small and Disadvantaged Business Ombudsman for Procurement in the Small Business Administration, and for other purposes.

S. 2760

At the request of Mr. ENZI, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2760, a bill to direct the Securities and Exchange Commission to conduct a study and make recommendations regarding the accounting treatment of stock options for purposes of the Federal securities laws.

S. RES. 242

At the request of Mr. THURMOND, the names of the Senator from Ohio (Mr. DEWINE), the Senator from Illinois (Mr. DURBIN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. Res. 242, a resolution designating August 16, 2002, as "National Airborne Day".

S. RES. 289

At the request of Ms. LANDRIEU, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. Res. 289, a resolution expressing the sense of the Senate that a commemorative postage stamp should be issued to celebrate the Bicentennial of the Louisiana Purchase.

S. CON. RES. 107

At the request of Mr. CRAIG, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. Con. Res. 107, a concurrent resolution expressing the sense of

Congress that Federal land management agencies should fully support the Western Governors Association "Collaborative 10-Year Strategy for Reducing Wildland Fire Risks to Communities and the Environment", as signed August 2001, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a National prescribed Fire Strategy that minimizes risks of escape.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRAIG:

S. 2777. A bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the treatment of qualified public educational facility bonds as exempt facility bonds; to the Committee on Finance.

Mr. CRAIG. Mr. President, I rise today to introduce. The Permanent Tax Relief for School Construction Act to make permanent the tax benefits we enacted last year relating to private activity bonds for school construction.

Last year, we approved a tax bill which had many important provisions. Unfortunately, these provisions only last until the end of 2010. That's a pretty poor way to engineer the tax code. American families and businesses only have nine years to reap the benefits of lower taxes, and right when they are getting used to the current tax code, it will revert to its pre-2001 level. That is simply unfair. In order to plan for the long term, families and businesses need to know that the lower taxes we enacted last year will be permanent.

An important part of the tax package that we approved last year was the inclusion of elementary and secondary public education under the private activities for which tax exempt bonds are issued. This provision will make it easier for States and school districts to raise money to build schools. In a State like mine, where there is a pressing need for school construction and not much revenue to fund it, this tax provision is very important. To see it end in 2010 would prevent many necessary facilities from being built.

The harm caused by the sunset of this tax provision is clearly illustrated by the plight of many of my State's school districts. During my travels throughout Idaho, I visited quite a few schools, many of which were the products of New Deal work projects in the 1930's. These schools are falling part now, though, and school districts have a very difficult time raising the necessary revenue to construct new buildings. Idaho, like many States, is suffering from reduced tax revenue, so aid from the State is just not available to supplement school districts' revenue. Another problem is that it takes a super-majority to pass a levy to raise property taxes to finance school districts, and in quite a few of Idaho's districts, taxpayers are already paying

high taxes. In many instances, the revenue isn't there for school districts.

We recognized that problem last year and helped out school districts by providing tax incentives for school construction bonds. This type of tax relief is the best way we in Washington can help school districts. Even though we've been increasing the Federal role in education over the past few years, education matters such as school construction are still primarily a local function, as they should be. Every step we take to insert a Federal role into this local authority is a step that must be carefully considered. By providing tax incentives for these local school districts, though, we are not undermining their authority. We are giving them tools to help themselves, and help the children they are serving. Let's make sure that the tax code lets them continue to help these children after 2010, so that no child is ever left behind.

By Mr. FEINGOLD:

S. 2780. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, I rise today to introduce important legislation to affirm Federal jurisdiction over isolated wetlands. I am pleased to be joined by Representatives OBERSTAR and DINGELL, who are today introducing companion legislation in the House of Representatives.

In the U.S. Supreme Court's January 2001 decision, *Solid Waste Agency of Northern Cook County* versus the Army Corps of Engineers, a 5 to 4 majority limited the authority of Federal agencies to use the so-called migratory bird rule as the basis for asserting Clean Water Act jurisdiction over non-navigable, intrastate, isolated wetlands, streams, ponds, and other waterbodies.

This decision, known as the SWANCC decision, means that the Environmental Protection Agency and Army Corps of Engineers can no longer enforce Federal Clean Water Act protection mechanisms to protect a waterway solely on the basis that it is used as habitat for migratory birds.

In its discussion of the case, the Court went beyond the issue of the migratory bird rule and questioned whether Congress intended the Clean Water Act to provide protection for isolated ponds, streams, wetlands and other waters, as it had been interpreted to provide for most of the last 30 years. While not the legal holding of the case, the Court's discussion has resulted in a wide variety of interpretations by EPA and Corps officials that jeopardize protection for wetlands, and other waters. The wetlands at risk include prairie potholes and bogs, familiar to many in Wisconsin, and many other types of wetlands.

In effect, the Court's decision removed much of the Clean Water Act

protection for between 30 percent to 60 percent of the Nation's wetlands. An estimate from my home state of Wisconsin suggested that more than 60 percent of the wetlands lost Federal protection in my State. My State is not alone. The National Association of State Wetland Managers have been collecting data from states across the country. For example, Nebraska estimates they will lose more than 40 percent of their wetlands. Indiana estimates they will lose 31 percent of total wetland acreage and 74 percent of the total number of wetlands. Delaware estimates the loss of 33 percent or more of their freshwater wetlands. These wetlands absorb floodwaters, prevent pollution from reaching our rivers and streams, and provide crucial habitat for most of the nation's ducks and other waterfowl, as well as hundreds of other bird, fish, shellfish and amphibian species. Loss of these waters would have a devastating effect on our environment.

In addition, by narrowing the water and wetland areas subject to Federal regulation, the decision also shifts more of the economic burden for regulating wetlands to State and local governments. My home State of Wisconsin has passed State legislation to assume the regulation of isolated waters, but many other States have not. This patchwork of regulation means that the standards for protection of wetlands nationwide is unclear, confusing, and jeopardizes the migratory birds and other wildlife that depend on these wetlands.

Therefore, Congress needs to re-establish the common understanding of the Clean Water Act's jurisdiction to protect all waters of the U.S. the understanding that Congress had when the Act was adopted in 1972 as reflected in the law, legislative history, and longstanding regulations, practice, and judicial interpretations prior to the SWANCC decision.

The proposed legislation does three things. It adopts a statutory definition of "waters of the United States" based on a longstanding definition of waters in the Corps of Engineers' regulations. Second, it deletes the term "navigable" from the Act to clarify that Congress's primary concern in 1972 was to protect the nation's waters from pollution, rather than just sustain the navigability of waterways, and to reinforce that original intent.

Finally, it includes a set of findings that explain the factual basis for Congress to assert its constitutional authority over waters and wetlands, including those that are called isolated, on all relevant Constitutional grounds, including the Commerce Clause, the Property Clause, the Treaty Clause, and the Necessary and Proper Clause. Additionally, the findings clarify Congress' view that protection of isolated wetlands and other waters is critical to protect water quality, public safety, wildlife, and other public interests, including hunting and fishing.

I also am very pleased to have the support of so many environmental and