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 sunsetting of this tax provision is clearly illustrated by the plight of many of my State's school districts. During may 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 Sates; 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 please 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 nonnavigable, 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 nations 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 be have the support of so many environmental and

conservation groups, and well as organizations that represent those who regulate and manage our country's wetlands such as Natural Resources Defense Council, Earthjustice, National Wildlife Federation, Sierra Club, and the National Association of State Wetland Managers. They know, as I do, that we need to re-affirm the Federal role in isolated wetland protection. This legislation is a first step in doing just that.

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.

Mr. REID. Mr. President, during the 103rd Congress in 1994, the Petroleum Marketing Practices Act, PMPA, was amended to protect independent petroleum wholesalers and retailers from arbitrary and unfair termination or nonrenewal of their franchise relationships with major oil companies.

However, this protection was provided only to motor and diesel fuel franchisees. Franchisees of other petroleum products sold by the major oil companies lack similar protection.

Today, I rise with Senators BURNS and ENSIGN to introduce a bill that extends the same protections enjoyed by the motor fuel industry to the lubricant industry.

I have heard from a constituent in Nevada that his franchise agreement to sell lubricating oils to car dealers in Las Vegas was arbitrarily canceled with 30 days notice. In essence, he had thirty days to convert all of his customers to a new brand.

This seem grossly unfair and, in fact, if the product sold by my constituent were gasoline or diesel fuel rather than lubricating oil, it would have been illegal.

I have been made aware of similar terminations or non-renewals in other states.

Without equal protection under the law, lubricant franchisees are vulnerable to predatory cancellation by their suppliers. This situation is exacerbated by recent mergers and acquisitions in the petroleum industry.

The merger of oil giants Chevron and Texaco and Shell Oil's recent acquisition of Penzoil-Quaker State will undoubtedly result in the termination of many independent lubricant franchisees. In New Mexico, there was a lubricant franchisee who had been promoting and distributing a branded lubricant to his customers for over 30 years, only be canceled with 30 days notice following a merger of refiners. This unfair practice stifles competition in the marketplace and invariably results in raising the price of the product, which hurts American consumers and small business. This is especially troublesome in rural areas.

Given the increasingly anti-competitive nature of the petroleum industry, the time has come to extend protections under current law for motor fuel marketers to include lubricant franchisees.

There are approximately 3,500 independent distributors and nearly 25,000 commercial retail lube oil outlets that could be impacted by the increasing frequency of lubricant franchise cancellations. Refiners have not suffered by complying with PMPA in motor fuels. Consequently, it is hard to believe it would be much of an imposition to include the much small segment of lubricant franchisees.

I introduce this bill today because it protects small businesses, benefits consumers and ensure fair competition in the marketplace.

In short, this bill is the right thing to do and I hope my colleagues will support it.

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. 2781

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

SECTION 1. PROTECTION OF FRANCHISED DISTRIBUTORS OF LUBRICATING OIL.

(a) DEFINITIONS.—Section 101 of the Petroleum Marketing Practices Act (15 U.S.C. 2801) is amended—

(1) in paragraph (1)(B)—

(A) in clause (ii)(II), by striking ''and'' at the end;

(B) by redesignating clause (iii) as clause (iv); and

(C) by inserting after clause (ii) the following:

''(iii) any contract under which a refiner authorizes or permits a distributor to use, in connection with the sale, consignment, or distribution of lubricating oil, a trademark that is owned or controlled by the refiner; and'';

(2) in paragraphs (2), (5), and (6), by inserting ''or lubricating oil'' after ''motor fuel'' each place it appears;

(3) by striking paragraphs (3) and (4) and inserting the following:

''(3) FRANCHISEE.—The term 'franchisee' means—

''(A) a retailer or distributor that is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel; or

''(B) a distributor that is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of lubricating oil.

''(4) FRANCHISOR.—The term 'franchisor' means—

''(A) a refiner or distributor that authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel; or

''(B) a refiner that authorizes or permits, under a franchise, a distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.''; and

(4) by adding at the end the following:

''(20) LUBRICATING OIL.—The term 'lubricating oil' means any grade of paraffinic or naphthenic lubricating oil stock that is refined from crude oil or synthetic lubricants.''.

(b) PROTECTION OF FRANCHISED DISTRIBUTORS OF LUBRICATING OIL.—Section 102(b)(2) of the Petroleum Marketing Practices Act (15 U.S.C. 2802(b)(2)) is amended by inserting after subparagraph (E) the following:

''(F) FRANCHISED DISTRIBUTORS OF LUBRICATING OIL.—In the case of a franchise between a refiner or a distributor for the sale, distribution, or consignment of trademarked lubricating oil, a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of the lubricating oil in the relevant geographic market in which the franchised lubricating oil is distributed, if—

''(i) the determination is made—

''(I) after the date on which the franchise is entered into or renewed; and

''(II) on the basis of a change in relevant facts or circumstances relating to the franchise that occurs after the date specified in subclause (I); and

''(ii) the termination or nonrenewal is not for the purpose of converting any accounts subject to the franchise to the account of the franchisor.''.

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 XVII 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.

Mr. SMITH of Oregon. Mr. President, I rise today to introduce a bill that will make Medicare's Social Health Maintenance Organization, SHMO, demonstration a permanent part of the Medicare+Choice, M+C, program. I am joined by my colleagues from Oregon, New York, Arizona, and California. The Social HMO demonstration was authorized 17 years ago to test models for improving care for frail seniors, expanding access to social and supportive services and better integrating these expanded benefits with medical services. Clearly, a seventeen year test is long enough—it's time for this successful program to become a permanent choice for Medicare beneficiaries.

Close to 80 percent of national health care expenditures are for persons with chronic conditions. Medicare beneficiaries are disproportionately affected by chronic illness. About 85 percent of people 65 and older have one chronic condition, and two thirds have two or more. Fully a third of Medicare beneficiaries have four or more chronic conditions. This group accounts for almost 80 percent of all Medicare spending. Yet, despite the predominance of chronic illness among seniors, Medicare continues to operate as an acute care model. So many of the services that are central to the health care needs of seniors are not covered by Medicare, including a number of preventive services, care coordination and disease management services, and home and community-based support services.

Social HMOs provide the care coordination and disease management services so critically important to frail and at-risk seniors with multiple chronic conditions and complex care needs. They are required to provide expanded care benefits such as prescription drugs, ancillary services such as eyeglasses and hearing aids, and community-based services such as personal care, homemaker services, adult day care, meals, and transportation. These services meet the chronic health care needs of seniors, helping them remain independent, while reducing Medicaid expenditures by avoiding or delaying nursing home placement.

Several recent studies have shown that Social HMO members are about 40 percent to 50 percent less likely to have long-term nursing home placements than comparison group members. Further, in a recent survey of Social HMO beneficiaries, over three-quarter of respondents indicated that the special services offered by their Social HMO were important to allowing them to keep living at home. Enhanced Social HMO services, such as early detection of illness, development of coordinated care plans to address problems identified during routine assessments, screening, and ongoing monitoring of care, has paid off in improved health outcomes for beneficiaries.

I am fortunate to represent one of the four original Social HMOs that were approved as part of the initial Medicare demonstration project in 1985. Senior Advantage II, offered by Kaiser Permanente's Northwest Division, currently serves about 4,300 Medicare beneficiaries from Salem, OR to Longview, WA, with its primary service area in Portland, OR. Since Kaiser opened its Social HMO program, it has served close to 15,000 beneficiaries with its enhanced benefits and special geriatric programs, which have led to fewer overall nursing home care days and a more consumer-oriented approach to care for frail or ill seniors.

The legislation I am introducing with my distinguished colleagues today would make permanent the existing Social HMO plans, like Kaiser, and would lay the ground work for evaluating whether to expand and replicate this model. Our bill requires the Secretary to conduct a comparative study of beneficiary and family member satisfaction to see how Social HMOs compare to Medicare+Choice and fee-for-service Medicare. It also requires MedPAC to evaluate the cost-effectiveness of Social HMOs with respect to reduced nursing home admissions, reduced incidence of Medicaid spend-down, and other aspects of the model that represent potential cost-savings. If MedPAC finds that Social HMOs are cost-effective, it must make recommendations to Congress on expanding and replicating this model.

To ensure that beneficiaries continue to receive the value added they have come to enjoy under this program, the Social HMOs must continue to provide the expanded benefit package currently offered under this legislation. Further, this benefit could not be changed by the Secretary without notification of Congress. Finally, to ensure that Social HMOs, which have significantly higher risk levels than average Medicare+Choice plans, can continue to finance a high level of benefits, any changes in plans' existing payments would need to go through a formal rulemaking process.

The Social HMO demonstration project has been re-validated by six acts of Congress since its creation. It is time to make this program permanent and lend a measure of stability to the plans and beneficiaries served by this innovative model. This program represents a fiscally sound approach to helping manage the chronic health care needs of our Nation's seniors, and I urge all of my colleagues to join with me and the rest of this bill's cosponsors in support of this important legislation.

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. 2782

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 ''Seniors Health and Independence Preservation Act of 2002''.

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

SEC. 2. MAKING THE SOCIAL HEALTH MAINTENANCE ORGANIZATION (SHMO) PROJECTS PERMANENT.

Part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) is amended by inserting after section 1857 the following new section:

''WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS

''SEC. 1858. (a) ESTABLISHMENT OF SHMO PROJECTS.—In the case of a project described in subsection (b), the Secretary shall approve, with appropriate terms and conditions as defined by the Secretary, applications or protocols submitted for waivers described in subsection (c), and the evaluation of such protocols, in order to carry out such project. Such approval shall be effected not later than 30 days after the date on which the application or protocol for a waiver is submitted or not later than 30 days after the date of enactment of the Deficit Reduction Act of 1984 (Public Law 98–369; 98 Stat. 494) in the case of an application or protocol submitted before the date of enactment of such Act. Not later than 36 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388), the Secretary shall approve applications or protocols described in paragraph (1) for not more than 4 additional projects described in subsection (b).

''(b) PROJECTS DESCRIBED.—A project referred to in subsection (a) is a project—

''(1) to demonstrate—

''(A) the concept of a social health maintenance organization with the organizations as described in Project No. 18–P–9 7604/1–04 of the University Health Policy Consortium of Brandeis University; or

''(B) in the case of a project conducted as a result of the amendments made by section 4207(b)(4)(B)(i) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–118), the effectiveness and feasibility of innovative approaches to refining targeting and financing methodologies and benefit design, including the effectiveness of feasibility of—

''(i) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers;

''(ii) refining targeting or reimbursement methodologies;

''(iii) the establishment and operation of a rural services delivery system;

''(iv) integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services (and for purposes of a project conducted under this clause, any requirement under a waiver granted under this section that a project disenroll individuals who develop end-stage renal disease shall not apply); or

''(v) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery;

''(2) which provides for the integration of health and social services under the direct financial management of a provider of services;

''(3) under which all services under this title will be provided by or under arrangements made by the organization at a fixed annual prepaid capitation rate for medicare of 100 percent of the adjusted average per capita cost; and

''(4) under which services under title XIX will be provided at a rate approved by the Secretary.

''(c) WAIVERS.—The waivers referred to in subsection (a) are appropriate waivers of—

''(1) certain requirements of this title, pursuant to section 402(a) of the Social Security Amendments of 1967 (Public Law 90–248; 81 Stat. 930), as amended by section 222 of the Social Security Amendments of 1972 (Public Law 92–603; 86 Stat. 1390);

''(2) certain requirements of title XIX, pursuant to section 1115; and

''(3) in the case of a project conducted as a result of the amendments made by section 4207(b)(4)(B)(i) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–118), any requirements of title XVIII or XIX that, if imposed, would prohibit such project from being conducted.

''(d) AGGREGATE LIMIT ON NUMBER OF MEMBERS.—The Secretary may not impose a limit on the number of individuals that may participate in a project conducted under this section, other than an aggregate limit of not less than 324,000 for all sites.

''(e) REPORTS.—

''(1) PRELIMINARY REPORT.—The Secretary shall submit a preliminary report to Congress on the status of the projects and waivers referred to in subsection (a) 45 days after the date of enactment of the Deficit Reduction Act of 1984 (Public Law 98–369; 98 Stat. 494).

''(2) INTERIM REPORT.—The Secretary shall submit an interim report to Congress on the projects referred to in subsection (a) not later than 42 months after the date of enactment of the Deficit Reduction Act of 1984 (Public Law 98–369; 98 Stat. 494).

''(3) SECOND INTERIM REPORT.—The Secretary shall submit a second interim report to Congress on the project referred to in paragraph (1) not later than March 31, 1993.

''(4) REPORT ON INTEGRATION AND TRANSITION.—

''(A) IN GENERAL.—The Secretary shall submit to Congress, by not later than January 1, 1999, a plan for the integration of health plans offered by social health maintenance organizations (including SHMO I and SHMO II sites developed under this section and similar plans) as an option under the Medicare+Choice program under this title.

''(B) PROVISION FOR TRANSITION.—The plan submitted under subparagraph (A) shall include a transition for social health maintenance organizations operating under the project authority under this section.

''(C) PAYMENT POLICY.—The report shall also include recommendations on appropriate payment levels for plans offered by such organizations, including an analysis of the application of risk adjustment factors appropriate to the population served by such organizations.

''(5) HHS REPORT.—The Secretary shall submit a report on the projects conducted under this section not later than the date that is 21 months after the date on which the Secretary submits to Congress the report described in paragraph (4).

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,500,000 for the costs of technical assistance and evaluation related to projects conducted as a result of the amendments made by section 4207(b)(4)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–118).''.

SEC. 3. EXPANSION OF SHMO PROJECTS INTO NONCONTIGUOUS SERVICE AREAS WITHIN A STATE.

Not later than the date that is 90 days after the date of enactment of this Act, the Secretary shall promulgate a regulation that permits each social health maintenance organization participating in a project conducted under section 1858 of the Social Security Act (as added by section 2) to expand the service area of such organization to include areas within the State served by the organization that are not contiguous to any other service area of the organization.

SEC. 4. PERMANENCE OF SHMO PLANNING GRANT SITES.

(a) ORIGINAL SHMO II DEMONSTRATIONS.—The 5 organizations authorized by section 4207(b)(4)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–118) to demonstrate the concept of social health maintenance organizations that were approved by the Secretary of Health and Human Services in 1995 shall be permitted to participate in the program under section 1858 of the Social Security Act (as added by section 2).

(b) SHMO II DUAL-ELIGIBLE PLANNING GRANTS.—Each entity that received a planning grant in 1998 under the 1997 Grants Program for Reforming Service Delivery for Dual Eligible Beneficiaries to develop a Second Generation Social HMO Demonstration Program shall be permitted to participate in the program under section 1858 of the Social Security Act (as added by section 2).

SEC. 5. PROCEDURES FOR SHMO BENEFIT AND PAYMENT MECHANISM CHANGES.

(a) CONGRESSIONAL NOTIFICATION OF BENEFIT CHANGES.—The Secretary of Health and Human Services shall notify the appropriate committees of Congress prior to making any change to the benefits available under a project under section 1858 of the Social Security Act (as added by section 2).

(a) RULEMAKING REQUIREMENT FOR PAYMENT MECHANISM CHANGES.—The Secretary may not change the payment mechanism applicable with respect to any social health maintenance organization project under section 1858 of the Social Security Act (as added by section 2), except by regulation.

SEC. 6. COMPREHENSIVE MEDPAC STUDY ON SHMO I AND SHMO II COST-EFFECTIVENESS AND POTENTIAL EXPANSION.

(a) STUDY.—

(1) IN GENERAL.—The Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) (in this section referred to as the ''Commission'') shall conduct a study on the cost-effectiveness of the projects and the potential expansion of such projects.

(2) COST-EFFECTIVENESS.—

(A) IN GENERAL.—In determining the cost-effectiveness of the projects under the study conducted under paragraph (1), the Commission shall take into account—

(i) the extent to which the per beneficiary costs to the medicare program for enrollees in a social health maintenance organization do not exceed the average per beneficiary costs to the medicare program for a comparable case mix of beneficiaries who are enrolled in the original medicare fee-for-service program;

(ii) the actuarial value of items and services available to beneficiaries enrolled in a social health maintenance organization but not available to beneficiaries enrolled in the original medicare fee-for-service program; and

(iii) the extent to which social health maintenance organizations reduced expenditures under the medicaid program under title XIX of the Social Security Act by—

(I) preventing individuals from being eligible for medical assistance under such program as medically needy individuals through the application of spend-down requirements for income and resources; or

(II) reducing the number of nursing home bed days associated with stays of 60 days or longer for medicaid beneficiaries.

(B) COMPARABLE CASE MIX.—In evaluating a comparable case mix of beneficiaries for purposes of clause (i)(I), the Commission shall take into account the following factors:

(i) Age.

(ii) Gender.

(iii) Diagnoses.

(iv) Functional status.

(v) Any other available demographic or illness factor deemed appropriate by the Commission.

(C) DATA.—In determining the cost-effectiveness of social health maintenance organizations under this subsection, the Commission shall evaluate data from social health maintenance organizations for the period beginning on January 1, 1997, and ending on the first December 31 occurring after the date of enactment of this Act.

(b) REPORT.—

(1) IN GENERAL.—Not later than the date that is 24 months after the date of enactment of this Act, the Commission shall submit to the Secretary of Health and Human Services and to the appropriate committees of Congress a report on the study conducted under subsection (a)(1).

(2) CONTENTS.—The report submitted under paragraph (1) shall contain—

(A) a statement regarding whether the Commission finds social health maintenance organizations to be cost-effective;

(B) recommendations regarding whether the projects should be expanded to include additional sites and whether additional social health maintenance organizations should be permitted to participate in the projects;

(C) recommendations on whether to modify or eliminate the aggregate limit on number of members under section 1858(d) of the Social Security Act (as added by section 2); and

(D) if the Commission recommends expansion or replication of the projects, recommendations on the appropriate implementation of such expansion.

(c) DEFINITIONS.—In this section:

(1) PROJECT.—The term ''project'' means a project conducted under section 1858 of the Social Security Act (as added by section 2) other than a project described in subsection (b)(1)(B)(iv) of such section.

(2) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act.

(3) ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM.—The term ''original medicare fee-for-service program'' means the program under parts A and B of the medicare program.

(4) SOCIAL HEALTH MAINTENANCE ORGANIZATION.—The term ''social health maintenance organization'' means an organization participating in a SHMO I project described in subparagraph (A) of section 1858(b)(1) of the Social Security Act (as added by section 2) or a SHMO II project described in subparagraph (B) of such section (other than a project described in clause (iv) of such subparagraph).

SEC. 7. SHMO BENEFICIARY SATISFACTION SURVEY.

(a) SURVEY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a comparative qualitative survey of the satisfaction of medicare beneficiaries enrolled in—

(A) the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act;

(B) a Medicare+Choice plan under part C of title XVIII of such Act; and

(C) a social health maintenance organization under section 1858 of such Act (as added by section 2).

(2) CONSIDERATIONS.—In determining beneficiary satisfaction, the Secretary of Health and Human Services shall take into account—

(A) the differences in the program or plan benefit structure;

(B) the extent to which the program or plan benefit structure enables beneficiaries to avoid or delay institutionalization;

(C) the amount of out-of-pocket costs saved by beneficiaries under the program or plan for traditional and expanded care services;

(D) the access to services by beneficiaries under the program or plan; and

(E) the satisfaction level of family members and caregivers of beneficiaries enrolled in the program or plan.

(b) PUBLICATION OF RESULTS AND SUBMISSION TO CONGRESS.—Not later than the date that is 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall post the results of the survey conducted under subsection (a)(1) on an Internet website and shall submit such results to the appropriate committees of Congress.

SEC. 8. CONFORMING CROSS-REFERENCES.

(a) SOCIAL SECURITY ACT.—

(1) The last sentence of section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–

23(a)(1)(B)), as added by section 605(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–556), is amended by striking ''(established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993)'' and inserting ''(established by section 1858)''.

(2) Section 1882(g)(1) of the Social Security Act (42 U.S.C. 1395ss(g)(1)) is amended by striking ''section 2355 of the Deficit Reduction Act of 1984'' and inserting ''section 1858''.

(b) MEDICARE, MEDICAID, AND SCHIP BENEFITS IMPROVEMENT AND PROTECTION ACT OF 2000.—Section 542(b)(2)(B)(iv) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–551), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by striking ''section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203)'' and inserting ''section 1858 of the Social Security Act''.

SEC. 9. LEGISLATIVE PURPOSE AND CONSTRUCTION.

(a) PRINCIPAL SUBSTANTIVE CHANGES TO MAKE SHMO PROJECTS PERMANENT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), section 2—

(A) restates, without substantive change, laws enacted before January 24, 2002, that were replaced by that section;

(B) may not be construed as making a substantive change in the laws replaced; and

(C) is superseded by any law that is enacted after January 24, 2002, that is inconsistent with such section or that supersedes that section to the extent of the inconsistency.

(2) PERMANENCY.—Section 2 extends the social health maintenance organization projects for an indefinite time period (beyond the date that is 30 months after the date that the Secretary submits to Congress the report described in section 1858(e)(4) of the Social Security Act, as added by section 2).

(3) MODIFICATION OF CERTAIN REPORTING REQUIREMENTS.—

(A) The report required to be submitted by the Secretary of Health and Human Services under section 1858(e)(5) of the Social Security Act (as added by section 2) is the same report as is required under the first sentence of section 4018 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–65), except that such report is no longer characterized as a final report.

(B) The Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) shall not be required to submit the report described in the second sentence of section 4018 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–65).

(b) REFERENCES.—A reference to a law replaced by section 2, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) CONTINUING EFFECT.—An order, rule, or regulation in effect under a law replaced by section 2 shall continue in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) ACTIONS UNDER PRIOR LAW.—An action taken under a law replaced by section 2 is deemed to have been taken under the corresponding provision enacted by this Act.

(e) INFERENCES.—No inference of legislative construction may be drawn by reason of a heading of a provision.

(f) SEVERABILITY.—If a provision enacted by this Act is—

(1) held invalid, each valid provision that is severable from the invalid provision shall remain in effect; and

(2) held invalid with respect to any application, the provision shall remain valid with respect to each valid application that is severable from the invalid application.

SEC. 10. REPEALS.

(a) INFERENCES OF REPEAL.—The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) LAWS REPEALED.—Except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act, the following provisions (and amendments made by such provisions) are repealed:

(1) Section 2355 of the Deficit Reduction Act of 1984 (Public Law 98–369; 98 Stat. 1103).

(2) Section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–65).

(3) Section 4207(b)(4) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–118).

(4) Section 13567 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 607).

(5) Paragraphs (6) through (8) of section 160(d) of the Social Security Act Amendments of 1994 (Public Law 103–432; 108 Stat. 4443).

(6) Section 4014 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 336).

(7) Section 531 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F of Public Law 106–113; 113 Stat. 1501A–388).

(8) Section 631 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Appendix F of Public Law 106–554; 114 Stat. 2763A–566).

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.

Mrs. CARNAHAN. Mr. President, I send a bill to the desk and ask that it be appropriately referred.

Today I am introducing legislation to correct a flaw in our tax system that penalizes the families of those who die while serving in our Armed Forces. The Honor Our Heroes Act will restore compassion to the tax code. It exempts from taxation the money the government provides following the death of an active duty servicemember. This payment is known as the death gratuity benefit.

Families are often crushed by the weight of funeral and other immediate expenses after a spouse, parent, or child is killed while serving in the military. Congress recognized that, at the very least, we owe these men and women assistance with this burden. In 1986, when the benefit was set at $3,000, Congress made this payment tax free. Over the years, rising costs led Congress to increase the payment to $6,000, but Congress did not make a corresponding change in the tax code. As a result, today, half of the payment is subject to the income tax.

Now, bereaved families receive this money with a red flag. Families are getting get less than the $6,000 Congress meant for them to have. We end up giving with one hand and taking away with the other.

Missouri has given two of her sons in the War on Terrorism. The families of these men made the greatest sacrifice possible. We should not be asking them to pay taxes on the benefit the government gives them to help pay for funeral expenses and other costs. But since 1991, thousands of families have had to pay these taxes. During this time, especially, when so many of members of the military are putting themselves directly in harm's way, we cannot let this unfair taxation continue.

Our colleagues in the House have taken an important step toward repairing this flaw, but they neglect the families for whom a future increase in the death gratuity would lead to tax liability. My bill leaves no such doubt. The Honor Our Heroes Act makes the entire amount of the death gratuity payment exempt from taxes, immediately and permanently. This bill ensures that payments made to families of servicemembers are never taxed again.

The legislation I am introducing today will make our Nation's gratitude tax-free to families coping with the death of a loved one. We owe this to our men and women in uniform, and pray that their families never have to face such a loss. I encourage my colleagues to support this bill.

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.

Mr. JOHNSON. Mr. President, I am pleased to rise today to introduce the Armed Forces Filing Fairness Act of 2002.

Current law allows for servicemembers serving in a combat zone, like Afghanistan, to receive a tax filing extension. The Armed Forces Filing Fairness Act will extend that filing deadline for military servicemembers serving in contingency operations as well. This bill would allow the military servicemember to delay filing taxes until they have returned to the United States, or when the combat zone or contingency area is no longer designated as such by the Department of Defense.

As the father of a son who serves in the Army and has recently returned from Afghanistan, I am pleased to introduce legislation that will help to lift some of the burdens from our military men and women serving so bravely in combat zones and contingency operations around the world. I am committee to improving the quality of life for our military servicemembers and their families, and I am proud to introduce the Armed Forces Filing Fairness Act of 2002, which will help make life just a little easier for our men and women in uniform.

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.

Mr. ALLARD. Mr. President, water is a precious resource that nourishes our civilization and cultivates our society. Yet finding clean, inexpensive water in Southeastern Colorado, can be difficult. That is why today I am introducing legislation that paves the way for expedited construction of the Arkansas Valley Conduit, a pipeline that will provide the small, financially strapped towns and water agencies along the Arkansas River with safe, clean, affordable water. By providing for the Federal Government to pay for 75 percent of the construction costs of the Conduit, we can put Southeastern Coloradans in the position of being able to provide themselves with the water that they so vitally need.

The Conduit was originally authorized with the enactment of the Fryingpan-Arkansas Project in 1962. Due to Southeastern Colorado's depressed economic status and the fact that the authorizing statute lacked a cost share formula, the Conduit was never built. Until recently, the region has been fortunate enough to enjoy an economical and safe alternative to pipeline-transportation of Project Water: the Arkansas River. Sadly, the water quality in the Arkansas has seriously declined. At the same time, the federal government has continued to strengthen its water quality standards while providing no assistance to water municipalities struggling to meet those standards. In order to comply with these standards. In order to comply with these standards, the region's municipalities have begun exploring options for water treatment, some of which are estimated to cost between $20,000,000 and $40,000,000. Taken together, the municipalities alone are facing potential expenditures of $320,000,000 to $640,000,000, simply to comply with federally mandated water quality standards. As you know, this is not a financially feasible option for small farming communities.

The local sponsors of the project have initiated, and are nearing the completion of, an independently funded feasibility study of the Conduit. They have developed a coalition of support from water users in Southeastern Colorado and are exploring options for financing their 25 percent share of the costs.

Because forty years have passed between the enactment of the authorizing statute and the current efforts to build the Conduit, the Bureau of Reclamation has stated that a Reevaluation Statement, rather than a Reconnaissance Study, is the next appropriate action. I would like to see the Bureau begin the Reevaluation Statement as quickly as possible. To help make this happen, I have made a request for an additional $300,000 in the Bureau's General Investigations account to be used to prepare the Statement and to begin work in earnest on the Conduit.

I am pleased to learn that the Appropriations Committee is currently working to include the funding for the Reevaluation Statement, the Conduit's next step.

With the help of my colleagues, the promise made by Congress forty years ago to the people of Southeastern Colorado, will finally become a reality. Thank you. 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. 2786

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

SECTION 1. COST-SHARING REQUIREMENT FOR THE ARKANSAS VALLEY CONDUIT IN THE STATE OF COLORADO.

(a) IN GENERAL.—Section 7 of Public Law 87–590 (76 Stat. 393) is amended—

(1) by striking ''SEC. 7.'' and inserting the following: ''SEC. 7. AUTHORIZATION OF APPROPRIATIONS.'';

(2) in the first sentence, by striking ''There is hereby authorized'' and inserting the following:

''(a) CONSTRUCTION.—There is authorized'';

(3) in the second sentence, by striking ''There are also'' and inserting the following:

''(b) OPERATIONS AND MAINTENANCE.—There are''; and

(4) by adding at the end the following:

''(c) ARKANSAS VALLEY CONDUIT.—

''(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to pay the Federal share of the costs of constructing the Arkansas Valley Conduit in accordance with subsection (a) of the first section.

''(2) NON-FEDERAL SHARE.—

''(A) IN GENERAL.—The non-Federal share of the total costs of construction (including design and engineering costs) of the Arkansas Valley Conduit shall be not more than 25 percent.

''(B) FORM.—Up to 100 percent of the non-Federal share may—

''(i) be in the form of in-kind contributions; or

''(ii) consist of amounts made available under any other Federal law.''.

(b) APPLICABILITY.—The amendments made by subsection (a) apply to any costs of constructing the Arkansas Valley Conduit incurred during fiscal year 2002 or any subsequent fiscal year.

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.

Mr. DASCHLE. Mr. President, today I am introducing the Wind Cave National Park Boundary Revision Act.

Wind Cave National Park, located in southwestern South Dakota, is one of the Park System's precious natural treasures and one of the Nation's first national parks. The cave itself, after which the park is named, is one of the world's oldest, longest and most complex cave systems, with more than 103 miles of mapped tunnels. The cave is well known for its exceptional display of boxwork, a rare, honeycomb-shaped formation that protrudes from the cave's ceilings and walls. While the cave is the focal point of the park, the land above the cave is equally impressive, with 28,000 acres of rolling meadows, majestic forests, creeks, and streams. As one of the few remaining mixed-grass prairie ecosystems in the country, the park is home to abundant wildlife, such as bison, deer, elk and birds, and is a National Game Preserve.

The Wind Cave National Park Boundary Revision Act will help expand the park by approximately 20 percent in the southern ''keyhole'' region. This land currently is owned by a ranching family that wants to see it protected from development and preserved for future generations. The land is a natural extension of the park, and boasts the mixed-grass prairie and ponderosa pine forests found in the rest of the park, including a dramatic river canyon. The addition of this land will enhance recreation for hikers who come for the solitude of the park's back country. It will also protect archaeological sites, such as a buffalo jump over which early Native Americans once drove the bison they hunted, and improve fire management.

This plan to expand the park has strong, but not universal, support in the surrounding community, whose views recently were expressed during a 60-day public comment period on the proposal. Most South Dakotans recognize the value in expanding the park, not only to encourage additional tourism in the Black Hills, but to permanently protect these extraordinary lands for future generations of Americans to enjoy. Understandably, however, some are legitimately concerned about the potential loss of hunting opportunities and local tax revenue.

Governor Janklow has expressed his conditional support for the park expansion, stating that there must be no reduction in the amount of lands with public access that currently can be hunted, that there must be no loss of tax revenue to the county from the expansion, and that chronic wasting disease issues must be dealt with effectively. There are reasonable conditions that should be met as this process moves forward.

The legislation I am introducing today protects hunting opportunities for sportsmen by excluding 880 acres of School and Public Lands property from the expansion. In addition, Wind Cave National Park and the Trust for Public Lands are working with interested parties to find a way to offset the loss of local county tax revenues. Finally, I understand that the South Dakota Game, Fish, and Parks Department has reached an agreement with Wind Cave officials to expand research into chronic wasting disease, which will benefit wildlife populations nationwide. I am satisfied that the legitimate concerns about the potential expansion have been effectively addressed and today am moving forward to begin the legislative phase of this process.

In conclusion, Wind Cave National Park has been a valued American

treasure for nearly 100 years. We have an opportunity with this legislation to expand the park and enhance its value to the public so that visitors will enjoy it even more during the next 100 years. It is my hope that my colleagues will support this expansion of the park and pass the legislation in the near future.

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. 2788

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 ''Wind Cave National Park Boundary Revision Act of 2002''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Wind Cave National Park Boundary Revision'', numbered 108/80,030, and dated June 2002.

(2) PARK.—The term ''Park'' means the Wind Cave National Park in the State.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of South Dakota.

SEC. 3. LAND ACQUISITION.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) MEANS.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) BOUNDARY.—

(1) MAP AND ACREAGE.—The land referred to in subsection (a)(1) shall consist of approximately 5,675 acres, as generally depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) REVISION.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer any land acquired under section 3(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(1) IN GENERAL.—The Secretary shall transfer from the Director of the Bureau of Land Management to the Director of the National Park Service administrative jurisdiction over the land described in paragraph (2).

(2) MAP AND ACREAGE.—The land referred to in paragraph (1) consists of the approximately 80 acres of land identified on the map as ''Bureau of Land Management land''.

SEC. 5. GRAZING.

(a) GRAZING PERMITTED.—Subject to any permits or leases in existence as of the date of acquisition, the Secretary may permit the continuation of livestock grazing on land acquired under section 3(a)(1).

(b) LIMITATION.—Grazing under subsection (a) shall be at not more than the level existing on the date on which the land is acquired under section 3(a)(1).

(c) PURCHASE OF PERMIT OR LEASE.—The Secretary may purchase the outstanding portion of a grazing permit or lease on any land acquired under section 3(a)(1).

(d) TERMINATION OF LEASES OR PERMITS.—The Secretary may accept the voluntary termination of a permit or lease for grazing on any acquired land.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4316. Mr. ROCKEFELLER (for himself, Ms. COLLINS, Mr. NELSON of Nebraska, Mr. SMITH of Oregon, Mrs. LINCOLN, Mr. DURBIN, Mr. CORZINE, Mr. HARKIN, Mr. MURKOWSKI, Mr. HUTCHINSON, Mrs. CLINTON, Mr. TORRICELLI, Mr. WELLSTONE, Mr. SCHUMER, Ms. MIKULSKI, Mr. KERRY, Ms. LANDRIEU, Mr. BINGAMAN, Mrs. FEINSTEIN, Mrs. MURRAY, Ms. SNOWE, Mr. ENZI, Mr. JOHNSON, Mr. SARBANES, Mr. DAYTON, Mr. LEAHY, Ms. CANTWELL, Mr. BAYH, Mr. KENNEDY, Mr. JEFFORDS, Mr. CLELAND, Mr. MILLER, and Mr. COCHRAN) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

SA 4317. Mrs. CLINTON (for herself, Mr. DEWINE, Mr. DODD, and Mr. BINGAMAN) submitted an amendment intended to be proposed by her to the bill S. 812, supra; which was ordered to lie on the table.

SA 4318. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 812, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4316. Mr. ROCKEFELLER (for himself, Ms. COLLINS, Mr. NELSON of Nebraska, Mr. SMITH of Oregon, Mrs. LINCOLN, Mr. DURBIN, Mr. CORZINE, Mr. HARKIN Mr. MURKOWSKI, Mr. HUTCHINSON, Mrs. CLINTON, Mr. TORRICELLI, Mr. WELLSTONE, Mr. SCHUMER, Ms. MIKULSKI, Mr. KERRY, Ms. LANDRIEU, Mr. BINGAMAN, Mrs. FEINSTEIN, Mrs. MURRAY, Ms. SNOWE, Mr. ENZI, Mr. JOHNSON, Mr. SARBANES, Mr. DAYTON, Mr. LEAHY, Ms. CANTWELL, Mr. BAYH, Mr. KENNEDY, Mr. JEFFORDS, Mr. CLELAND, Mr. MILLER, and Mr. COCHRAN) proposed an amendment to amendment SA 4299 proposed by Mr. REID (for Mr. DORGAN (for himself, Mr. WELLSTONE, Mr. JEFFORDS, Ms. STABENOW, Ms. COLLINS, Mr. LEVIN, Mr. JOHNSON, Mr. MILLER, Mr. DURBIN, Mr. FEINGOLD, and Mr. HARKIN)) to the bill (S. 812) to amend the Federal Food, Drug, and Co:

At the appropriate place, insert the following:

SEC. ___. TEMPORARY STATE FISCAL RELIEF.

(a) TEMPORARY INCREASE OF MEDICAID FMAP.—

(1) PERMITTING MAINTENANCE OF FISCAL YEAR 2001 FMAP FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2002.—Notwithstanding any other provision of law, but subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2002 is less than the FMAP as so determined for fiscal year 2001, the FMAP for the State for fiscal year 2001 shall be substituted for the State's FMAP for the third and fourth calendar quarters of fiscal year 2002, before the application of this subsection.

(2) PERMITTING MAINTENANCE OF FISCAL YEAR 2002 FMAP FOR FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to paragraph (5), if the FMAP determined without regard to this subsection for a State for fiscal year 2003 is less than the FMAP as so determined for fiscal year 2002, the FMAP for the State for fiscal year 2002 shall be substituted for the State's FMAP for each calendar quarter of fiscal year 2003, before the application of this subsection.

(3) GENERAL 1.35 PERCENTAGE POINTS INCREASE FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2002 AND FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to paragraphs (5) and (6), for each State for the third and fourth calendar quarters of fiscal year 2002 and each calendar quarter of fiscal year 2003, the FMAP (taking into account the application of paragraphs (1) and (2)) shall be increased by 1.35 percentage points.

(4) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Notwithstanding any other provision of law, but subject to paragraph (6), with respect to the third and fourth calendar quarters of fiscal year 2002 and each calendar quarter of fiscal year 2003, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 2.7 percent of such amounts.

(5) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this subsection shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(A) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4); or

(B) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.).

(6) STATE ELIGIBILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), a State is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) only if the eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on January 1, 2002.

(B) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—A State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after January 1, 2002, but prior to the date of enactment of this Act is eligible for an increase in its FMAP under paragraph (3) or an increase in a cap amount under paragraph (4) in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on January 1, 2002.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) or (B) shall be construed as affecting a State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(7) DEFINITIONS.—In this subsection:

(A) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(B) STATE.—The term ''State'' has the meaning given such term for purposes of