S. 2922, a bill to facilitate the deployment of wireless telecommunications networks in order to further the availability of the Emergency Alert System, and for other purposes.

S. 2949

At the request of Mr. HOLLINGS, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2949, a bill to provide for enhanced aviation security, and for other purposes.

S. 2965

At the request of Mr. KENNEDY, the name of the Senator from Montana (Mr. BAUCUS) was withdrawn as a cosponsor of S. 2965, a bill to amend the Public Health Service Act to improve the quality of care for cancer, and for other purposes.

S. 3009

At the request of Mr. WELLSTONE, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 3009, a bill to provide economic security for America's workers.

S. CON. RES. 11

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Con. Res. 11, A concurrent resolution expressing the sense of Congress to fully use the powers of the Federal Government to enhance the science base required to more fully develop the field of health promotion and disease prevention, and to explore how strategies can be developed to integrate lifestyle improvement programs into national policy, our health care system, schools, workplaces, families and communities.

S. CON. RES. 94

At the request of Mr. WYDEN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. Con. Res. 94, A concurrent resolution expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

S. CON. RES. 138

At the request of Mr. REID, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S.Con.Res. 138, A concurrent resolution expressing the sense of Congress that the Secretary of Health And Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests if demonstrated to be effective, and for other purposes.

S. CON. RES. 142

At the request of Mr. SMITH of Oregon, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. Con. Res. 142, A concurrent resolution expressing support for the goals and ideas of a day of tribute to all firefighters who have died in the line of duty and recognizing the important mission of the Fallen Firefighters Foundation in assisting family members to overcome the loss of their fallen heroes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 3018. A bill to amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare program, and for other purposes; read the first time.

Mr. BAUCUS. Mr. President, I rise today, along with Senator GRASSLEY, to introduce the ''Beneficiary Access to Care and Medicare Equity Act.'' This legislation is critical to ensuring access to quality, affordable health care for the 40 million Medicare beneficiaries nationwide.

Medicare is one of America's great success stories. Since its inception 36 years ago, Medicare has provided millions of elderly and disabled Americans with insurance coverage they would not have otherwise had. When Medicare was enacted, about half of America's elderly lacked health insurance. Now nearly all are covered by Medicare.

Over the past three decades, Medicare has undergone significant changes, including changes in the way that health care providers are reimbursed. In response to rising Medicare expenditures, Congress has responded with complex cost-containment mechanisms: diagnosis related groups, or DRGs, for hospital inpatient services in the early 1980s, a fee schedule for physicians' services in 1989. And in 1997, Congress passed the Balanced Budget Act, which mandated prospective payment systems for hospital outpatient departments, home health agencies, and skilled nursing facilities. Gradually, Medicare has changed from a cost-based system to one of prospective, flat-rate payment.

The significant changes in payment policy have resulted in a few bumps along the way, particularly those enacted as part of the Balanced Budget Act of 1997. The BBA was a well-intended attempt to get our Nation's fiscal house in order and extend the life of the Medicare trust fund. And in that regard, the goal of the legislation was achieved. Solvency of the Part A Trust Fund was extended by almost 30 years. But in some instances, the BBA cuts went too far.

In such cases, these cuts threatened to reduce Medicare and Medicaid beneficiaries' access to quality medical care and services. Congress responded by passing the Balanced Budget Refinement Act, BBRA, of 1999 and the Beneficiary Improvement and Protection Act, BIPA, of 2000. I was proud to play a role in both of these bills, including help for rural areas, which were disproportionately affected by the BBA.

Despite the policies and payment changes enacted as part of BBRA and BIPA, we still find that in some cases more improvements and adjustments are needed. And that is why Senator GRASSLEY and I are introducing this bill today.

So what does this bill do? Most importantly, this bill would restore payments to physicians, which were cut in 2002 by about five percent. Under the Medicare fee schedule, payment for physician services depends on several factors, including the growth in medical inflation, performance of the American economy, and changes in law and regulation.

Also central to the calculation of payments are estimates by the Centers for Medicare and Medicaid Services, or CMS, which was formerly known as the Health Care Financing Administration, of the numbers of Medicare beneficiaries in traditional fee-for-service Medicare. Largely because of significant estimation errors and a weakened economy, physicians under Medicare experienced an average payment reduction of five percent in 2002. If Congress does not act to fix the system, further large cuts are forecast for the coming years. And the potential consequences of inaction are serious.

According to a 30-State survey by the Medicare Rights Center, Medicare beneficiaries in 15 states and the District of Columbia are already having trouble finding a physician who accepts new Medicare patients. And researchers from the Center for Studying Health System Change have found that the percentage of Medicare beneficiaries who reported delaying or not getting necessary physician care rose from 9.1 percent in 1997 to 11 percent in 2001. The study also showed that of the near-elderly, patients between 50 and 64, 18.4 percent experienced difficulty in seeing a physician in 2001, up from 15.2 percent in 1997.

This bill would provide positive payment updates to the physician fee schedule over the next three years, representing a dramatic turnaround in Medicare physician payments. It would also modify the formula that is used to increase payments each year, the so-called SGR, which most physicians have learned to view with uncertainty and distrust.

While this proposal on physician updates represents progress, I acknowledge that it is imperfect, producing large reductions in Medicare physician payments in 2006 and beyond. I am committed to working with my colleagues in the Congress and the Administration to find a more reasonable solution.

Aside from physician payments, this legislation addresses a number of other important Medicare reimbursement issues, many of which are set to take effect today, October 1. The bill will

completely eliminate the 15 percent cut in home health payments. It will forestall large cuts to indirect medical education, so critical to the well-being of our nation's teaching hospitals. And the bill will continue additional payments to nursing homes to help them hire more staff to care for patients.

It should come as no surprise that another priority of mine, and Senator GRASSLEY's, is ensuring that rural areas are treated on par with their urban counterparts. I represent a state with a population density of about six people per square mile where patients and providers are often separated by vast distances. The current Medicare payment structure does not adequately account for the unique circumstances and challenges of providing medical care in such areas, where economies of scale often make systems like prospective payment unworkable.

That's why I was proud to help write the Sole Community Hospital law in the early 1980s and the Critical Access Hospital, CAH, program in 1997. Based on the Montana Medical Assistance Facility program, or MAF, the CAH concept has been a lifeline for over 600 rural communities nationwide, allowing hospitals that might have otherwise closed to stay open. This bill makes a number of important changes to the CAH program, including a provision allowing greater flexibility in the use of acute care and swing beds, as well as reauthorization of the Rural Hospital Flexibility Grant Program, which assists facilities in making the switch to CAH status.

Aside from Critical Access Hospitals, this legislation makes a number of other important changes to bring Medicare equity to rural America. By making the Medicare Incentive Payment Program, MIPP, automatic, physicians can more easily receive their 10 percent bonus for practicing in health professional shortage areas. And by setting a floor for the physician work component of Medicare's geographic cost index, payments to rural physicians will be raised.

This bill also puts rural and urban areas on a more level playing field with respect to non-CAH hospital payments. It equalizes the base payment rate for all PPS hospitals, eliminating the differential in the so-called ''standardized amount,'' which systematically pays rural areas less than large urban ones. And it makes Disproportionate Share Hospital, DSH, payments more equitable by allowing rural facilities to receive increased payments for treating indigent patients.

Many of these provisions are based on the work and recommendations of the Medicare Payment Advisory Commission, MedPAC, in their report on rural Medicare policy. That report included telling statistics, and reinforced what I hear from my constituents on a regular basis: Medicare payment policy disadvantages rural areas and changes are needed. For example, in 1999, overall Medicare margins for rural hospitals with 50 beds or less were negative 5.4 percent, worse than any other category of hospital. And total margins for these hospitals are also the lowest, at 1.7 percent in 1999, compared to 3.6 percent for all hospitals. Clearly Congress has work to do to ensure greater geographic equity in Medicare payment, and this bill makes great strides to that end.

In addition to many reimbursement changes, this legislation contains important relief for providers struggling with Medicare's regulatory framework. Many of these regulatory relief provisions were contained in legislation I wrote with Senators KERRY, MURKOWSKI and GRASSLEY last year. Among other things, these provisions will: ensure that CMS answers questions posed by health care providers in a timely manner; give additional appeals rights to providers, so that they receive fair treatment for honest billing mistakes; and ensure that CMS demands on providers to return overpayments are reasonable and do not force small providers to declare bankruptcy.

In addition to Medicare provisions, this legislation addresses many critical issues related to Medicaid and the State Children's Health Insurance Program. The bill provides $5 billion in fiscal relief to states struggling with tight Medicaid budgets and nearly $3 billion to help safety net hospitals continue to provide critical health care services to low-income Americans. The bill also ensures the continued success of the S–CHIP program by giving States more time to spend their S–CHIP allotments and ensuring that as many children as possible are covered.

The bill provides immediate, temporary fiscal relief to states in two ways: by giving states a temporary increase in their Medicaid match rate, or FMAP; and by increasing funding for the Social Services Block Grant. Taken together, these two approaches will help alleviate the pressure on states to cut programs that serve low income families, children, seniors and the disabled.

The State fiscal relief provision recognizes that States are in the midst of their worst fiscal crisis since the early 1990s. States have cut their budgets across many programs, from education to health care to other social programs. And because Medicaid is one of the largest parts of state budgets, Medicaid continues to be a prime target for spending cuts.

According to a recent report from the Kaiser Commission on Medicaid and the Uninsured, 45 states took action to reduce their Medicaid spending growth in fiscal year 2002, and 41 states are planning further reductions in fiscal year 2003. In my own State of Montana, Medicaid beneficiaries have been asked to pay a larger share of the costs of their coverage, and provider reimbursement rates have been cut.

These program cuts have come about at the same time that Medicaid rolls are increasing due to the recession. As more people lose their jobs and health insurance—just yesterday, we learned that in 2001 another 1.4 million people joined the ranks of the uninsured, many become eligible for Medicaid. At the same time, States are forced to cut back on this vital safety net program when people need it most. This is a vicious cycle that we must help end. If we don't, the ultimate result of all this is an increase in the uninsured. Just as we saw in the early 1990s.

The financial crisis facing State Medicaid programs is also felt by the facilities that provide care to Medicaid beneficiaries and low-income insured populations. To ensure that hospitals serving our most vulnerable populations can continue providing their vital services, this bill eliminates the scheduled reduction in federal Medicaid funding for hospitals that serve a disproportionate share of Medicaid beneficiaries and low-income, uninsured patients. Without the restoration of these DSH funds, safety net hospitals would lose nearly $3 billion in federal Medicaid funding over the next three years. States with smaller DSH programs will also benefit through this legislation, as it provides them with greater resources to serve their low-income patients.

This bill also seeks to continue the unqualified success of the S–CHIP program by ensuring that S–CHIP funds are used to cover as many children as possible, as efficiently and effectively as possible. By giving states an additional year to spend funds that would otherwise be returned to the Federal Treasury and renewing the ongoing system to allocate unspent S–CHIP funds equitably among the States, the legislation will help sustain the significant progress S–CHIP has made in reducing the ranks of uninsured children. In addition, the new caseload stabilization pool will provide additional funds to states expected to have insufficient federal funds over the next few years, reducing the chance that children will be dropped from the rolls.

This bill would also make important improvements to the Medicaid and S–CHIP waiver process. Medicaid and S–CHIP waivers have become an increasingly powerful way for the Secretary of Health and Human Services to make changes to crucial health programs without having to consult with, or seek legislative change from, the Congress.

The General Accounting Office recently identified serious problems with the current waiver approval process, including a lack of accountability in several areas. I am pleased to have worked with Senator GRASSLEY to develop legislation that would address the key GAO recommendations and begin to restore integrity to the waiver process. More specifically, this bill would require that the waiver process be more transparent and require public notification when major changes are in store.

Our bill would also prohibit approval of future waivers that would take dollars set aside for children's health and

use them instead on childless adults. Where Congress has set limits on the use of federal dollars, waivers should not be used as a back door way to get around those limits.

Without question, the Medicaid and S–CHIP programs are vital components of America's health care safety net, and both programs are critical to the well-being of thousands in my State. The Billings Gazette reported yesterday that about 14,000 of the 18,000 newly-insured Montanans since 1999 were additions to Montana's Medicaid and S–CHIP programs.

But despite the critical role these programs play, I am not convinced that we know enough about our nation's health care safety net. Based on legislation I introduced last congress with Senator GRASSLEY, the bill we are introducing today would change that, by establishing the Safety Net Organizations and Patient Advisory Commission. SNOPAC would be an independent and nonpartisan commission charged with the authority to oversee all aspects of America's health care safety net, including Medicaid and S–CHIP. Based on an Institute of Medicine report, SNOPAC will include health care experts from the disparate parts of our safety net system, reporting to Congress on recommendations to maintain our intact, but endangered, health care safety net.

Some will argue that Congress has more pressing Medicare priorities to address than restoring payments to health care providers. They argue will that before action on a bill concerning Medicare payment policy, Congress should debate and enact a solid prescription Medicare drug benefit.

I agree wholeheartedly with the need for a good drug benefit. I have worked for years to enact one, and I think that the lack of a drug benefit is the greatest deficiency in the Medicare program today. Almost 40 percent of seniors currently lack drug coverage. And for those who have it, it is often unreliable and unaffordable.

I did my utmost to pass a drug benefit this year, and I will continue my efforts until one is signed into law. But I will not support a benefit that is unworkable for Montana. And I will not support reviving a prescription drug debate that threatens passage of the important bill Senator GRASSLEY and I are introducing today.

The United States Senate debated Medicare prescription coverage in July. We had four votes on four different proposals to establish a drug benefit under Medicare. But all of those votes failed. None came close to getting the required 60 votes for passage in the Senate.

Voting again on a prescription drug bill that has not changed materially from the proposals we voted on in July is not the way to pass a drug benefit. In fact, it's a prescription for legislative impasse—on prescription drugs and on provider reimbursement issues.

For those reasons, I urge my colleagues to support this legislation, with the recognition that there are other pressing issues facing the Medicare program besides provider payments, but with the acknowledgment that maintaining access to health care services is also an important goal.

As Calvin Coolidge once said, ''We cannot do everything at once . . . but we can do something at once.'' Today is October 1, and large Medicare, Medicaid and S–CHIP payment reductions and changes will go into effect. Congress should act as soon as possible to address these issues, to get something done, and to ensure access to care for our seniors, our children, and our disabled population. This bill is necessary, timely and should be considered with expedition. I urge Congress and the President to act swiftly on this comprehensive legislation and enact it into law.

Mr. GRASSLEY. Mr. President, I am joining Chairman BAUCUS today to introduce the Beneficiary Access to Care and Medicare Equity Act of 2002.

This legislation arrives at an important time for Medicare beneficiaries and the providers that care for them: October 1. Many provisions of the Medicare law that ensure adequate payment for providers, and in turn, beneficiary access to care, expire today. I urge the Senate to consider this legislation with all speed, as soon as possible.

Our bill addresses pressing needs. The clock is running out on Medicare payments to doctors, who are scheduled for yet another reduction in their fees for a second straight year, absent Congressional action. Skilled Nursing Facilities also face a major reduction in payment today. In other areas facing imminent payment cuts, such as home health and hospital services, our bill injects financial support that will stabilize these essential services our seniors rely on. The legislation also provides billions in aid to State governments, many of them facing steep budget deficits, so they can meet the needs of citizens who rely on the Medicaid and Children's Health Insurance Programs.

In addition to ensuring continued access to quality care for Medicare beneficiaries, our bipartisan Beneficiary Access to Care and Medicare Equity Act makes long overdue improvements to health care in rural America. Our bill invests in States like Iowa, my home State, where small providers that practice efficient medicine are hurt by complex payment formulas that favor high-cost care in big cities.

The formulas also don't recognize special costs faced by smaller, more isolated physicians, hospitals and clinics. It obviously doesn't make sense to penalize States like Iowa who do more with less. That's why I'm so committed to fixing these formulas. The proposal I've put together with Senator BAUCUS would provide a tremendous infusion of cash to hard-pressed health care providers across Iowa and to other rural States. It takes money to ensure access to care for Iowans, and this will help make the federal government part of the solution instead of part of the problem.

Together, Senator BAUCUS and I have introduced our bill under Rule 14, which means the bill will be placed directly on the calendar two days from now, rather than referred to our own Committee, the Finance Committee. We agreed to take this extraordinary step because the Senate is basically tied up in knots right now. Well, our message is that Medicare fairness is too urgent to let this bill be a victim of gridlock. Our action today gives Senate Majority Leader DASCHLE the ability to call the bill up as early as Thursday. In short, there's no time to waste.

By Mr. MCCAIN:

S. 3019. A bill to authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of Cesar Estrada Chavez and the farm labor movement; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I am introducing legislation today to authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of Cesar Estrada Chavez. Chavez is one of the most revered public servants in our history for his leadership in helping organize migrant farm workers, and for providing inspiration to the most oppressed in our society. It is important that we cherish his struggle and do what we can to preserve certain sites located in Arizona, California and other states that are significant to his life.

My fellow Arizonan, Cesar Chavez was born in Yuma. He was the son of migrant farm workers, and an exemplary American hero. He no doubt loved qualities of life associated with his family's heritage, but he will be remembered for the sincerity of his American patriotism. He fought to help Americans transcend distinctions of experience, and share equality in the rights and responsibilities of freedom. He made America a bigger and better Nation.

While Chavez and his family migrated across the southwest looking for farm work, he evolved into a defender of worker's rights. He founded the National Farm Workers Association in 1962, which later became the United Farm Workers of America. Essentially, he gave a voice to those that had no voice. In his words: ''We cannot seek achievement for ourselves and forget about progress and prosperity for our community . . . our ambitions must be broad enough to include the aspirations and needs of others, for their sakes and for our own.''

This legislation, almost identical to the House bill, H.R. 2966, introduced by Congresswoman HILDA SOLIS, D–CA, in September 2001, would specifically authorize the Secretary of the Interior to determine whether any of the sites

meet the criteria for being listed on the National Register of Historic Landmarks. The study would be conducted within three years. The goal of this legislation is to establish a foundation for a future bill that will designate land for these sites to become Historic Landmarks.

Cesar Chavez was a humble man of deep conviction who understood what it meant to serve and sacrifice for others. He was a true American hero that embodied the values of justice and freedom this nation holds dear. Honoring the places of his life will enable his legacy to inspire and serve as an example for our future leaders.

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. 3018

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 ''César Estrada Chávez Study Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) on March 31, 1927, César Estrada Chávez was born on a small farm near Yuma, Arizona;

(2) at age 10, Chávez and his family became migrant farm workers after they lost their farm in the Great Depression;

(3) throughout his youth and into adulthood, Chávez migrated across the Southwest, laboring in fields and vineyards;

(4) during this period, Chávez was exposed to the hardships and injustices of farm worker life;

(5) in 1952, Chávez's life as an organizer and public servant began when he left the fields and joined the Community Service Organization, a community-based self-help organization;

(6) while with the Community Service Organization, Chávez conducted—

(A) voter registration drives; and

(B) campaigns against racial and economic discrimination;

(7) during the late 1950's and early 1960's, Chávez served as the national director of the Community Service Organization;

(8) in 1962, Chávez founded the National Farm Workers Association, an organization that—

(A) was the first successful farm workers union in the United States; and

(B) became known as the ''United Farm Workers of America'';

(9) from 1962 to 1993, as leader of United Farm Workers of America, Chávez achieved for tens of thousands of farm workers—

(A) dignity and respect;

(B) fair wages;

(C) medical coverage;

(D) pension benefits;

(E) humane living conditions; and

(F) other rights and protections;

(10) the leadership and humanitarianism of César Chávez continue to influence and inspire millions of citizens of the United States to seek social justice and civil rights for the poor and disenfranchised; and

(11) the life of César Chávez and his family provides an outstanding opportunity to illustrate and interpret the history of agricultural labor in the western United States.

SEC. 3. RESOURCE STUDY.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary of the Interior (referred to in this section as the ''Secretary'') shall complete a resource study of sites in the State of Arizona, the State of California, and other States that are significant to the life of César E. Chávez and the farm labor movement in the western United States to determine—

(1) appropriate methods for preserving and interpreting the sites; and

(2) whether any of the sites meets the criteria for listing on the National Register of Historic Places or designation as a national historic landmark under—

(A) the Act of August 21, 1935 (16 U.S.C. 461 et seq.); and

(B) the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Secretary shall—

(1) consider the criteria for the study of areas for potential inclusion in the National Park System under section 8(b)(2) of Public Law 91–383 (16 U.S.C. 1a–5(b)(2)); and

(2) consult with—

(A) the César E. Chávez Foundation;

(B) the United Farm Workers Union;

(C) State and local historical associations and societies; and

(D) the State Historic Preservation Officers of the State of Arizona, the State of California, and any other State in which a site described in subsection (a) is located.

(c) REPORT.—On completion of the study under subsection (a), the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on—

(1) the findings of the study; and

(2) any recommendations of the Secretary.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. ENZI:

S. 3020. A bill to direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in the Cheyenne, Wyoming, metropolitan area, to the Committee on Veterans' Affairs

Mr. ENZI. Mr. President, I rise today with great honor and pride to introduce a bill that would direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in Cheyenne, WY.

As our Nation's veterans have proven time and time again, whenever the fear of war has knocked on America's door, we have had the strength to open it. This year has been no different. Since last September, we have witnessed the beginning of a new kind of war, a war on terrorism, and we have been confronted by the most evil of leaders who seek to destroy our love of country and freedom. Yet, our Nation's military men and women and our veterans have once again responded to the call of duty to protect everything we hold dear. They remind us that our faith in God, our belief and trust in our communities, and our strength as a Nation can and will endure through these extraordinary times.

This is why I am introducing a bill to honor those who have given so much in defense of our great country. The price of freedom is not free, and many of our Nation's veterans have paid the ultimate price. Millions have been laid to rest in our Nation's national cemeteries, and millions more will follow. These veterans deserve to be placed next to those veterans with whom they so courageously engaged in battle throughout the years.

All veterans deserve the opportunity to be buried in a veterans cemetery regardless of their place of residency. Fortunately, the Department of Veterans Affairs recognizes the importance of providing burial sites for our Nation's veterans next to their comrades and near their families. As such, they have established a goal to increase the percentage of veterans served by a national or State veterans cemetery within 75 miles of their residence to 88 percent by 2006. I commend the VA's efforts and believe my bill will help the department reach that goal.

There are currently more than 53,000 veterans in Wyoming. They live in every town, big and small, and they must often travel hundreds of miles for health care and other veteran benefits. The largest and most concentrated group of veterans in Wyoming live near Wyoming's only military base, F.E. Warren Air Force Base in Cheyenne. Unfortunately, this veteran population must travel either 110 miles to the national cemetery in Colorado or 235 miles to the national cemetery in Maxwell, NE. It is worse for the veteran population living in other areas of the State. There are no national cemeteries in Montana, Idaho or Utah, which leaves veterans in the northwest with few options.

Regardless of a veteran's place of residency in Wyoming, most are forced to select the Wyoming State Cemetery as their place of burial because it is the only state or national cemetery in the entire state. Although it is located in Wyoming's second-largest city of Casper, Wyoming's State cemetery does not adequately meet the needs of veterans in a State that spans more than 97,000 square miles. It is, on average, 150 miles from any other incorporated city, and is more than 175 miles from the most concentrated veteran population in Cheyenne. While I commend the Wyoming State Cemetery for its exceptional service and careful maintenance, this is an extraordinary distance for friends and family to travel to visit their deceased loved ones.

As such, I am introducing legislation today to create a National Veterans Cemetery in Cheyenne, WY because every veteran deserves to be buried near their families and with the honor that comes with being laid to rest in a national veterans cemetery.

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. 3020

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

SECTION 1. ESTABLISHMENT OF NATIONAL CEMETERY IN CHEYENNE, WYOMING, METROPOLITAN AREA.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall establish, in accordance with chapter 24 of title 38, United States Code, a national cemetery in the Cheyenne, Wyoming, metropolitan area to serve the needs of veterans and their families.

(b) CONSULTATION IN SELECTION OF SITE.—Before selecting the site for the national cemetery established under subsection (a), the Secretary shall consult with—

(1) appropriate officials of the State of Wyoming and local officials of the Cheyenne metropolitan area; and

(2) appropriate officials of the United States, including the Administrator of General Services, with respect to land belonging to the United States in that area that would be suitable to establish the national cemetery under subsection (a).

(c) AUTHORITY TO ACCEPT DONATION OF PARCEL OF LAND.—(1) The Secretary may accept on behalf of the United States the gift of an appropriate parcel of real property. The Secretary shall have administrative jurisdiction over such parcel of real property, and shall use such parcel to establish the national cemetery under subsection (a).

(2) For purposes of Federal income, estate, and gift taxes, the real property accepted under paragraph (1) shall be considered as a gift to the United States.

(d) REPORT.—As soon as practicable after the date of enactment of this Act, the Secretary shall submit to Congress a report on the establishment of the national cemetery under subsection (a). The report shall set forth a schedule for the establishment of the national cemetery and an estimate of costs associated with the establishment of the national cemetery.

By Mr. SARBANES (for himself, Mr. WARNER, and Ms. MIKULSKI):

S. 3023. A bill to require the Secretary of Agriculture to establish a program to expand and strengthen cooperative efforts to restore and protect forests in the Chesapeake Bay watershed, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SARBANES. Mr. President, today I am introducing legislation to continue and enhance the USDA Forest Service's role in the restoration of the Chesapeake Bay watershed. Joining me in sponsoring this legislation are my colleagues, Senators WARNER and MIKULSKI.

Forest loss and fragmentation are occurring rapidly in the Chesapeake Bay region and are among the most important issues facing the Bay and forest management today. According to the National Resources Inventory, the States closest to the Bay lost 350,000 acres of forest between 1987–1997 or almost 100 acres per day. More and more rural areas are being converted to suburban developments resulting in smaller contiguous forest tracts. These trends are leading to a regional forest land base that is more vulnerable to conversion, less likely to be economically viable in the future, and is losing its capacity to protect watershed health and other ecological benefits, such as controlling storm water runoff, erosion and air pollution, all critical to the Bay clean-up effort.

Since 1990, the USDA Forest Service has been an important part of the Chesapeake Bay Program. Administered through the Northeastern Area, State and Private Forestry, this program has worked closely with Federal, State and local partners in the six-state Chesapeake Bay region to demonstrate how forest protection, restoration and stewardship activities, can contribute to achieving the Bay restoration goals. Over the past 12 years, it has provided modest levels of technical and financial assistance, averaging approximately $300,000 year, to develop collaborative watershed projects that address watershed forest conservation, restoration and stewardship. With the signing of the Chesapeake 2000 Agreement, the role of the USDA Forest Service has become more important than ever. Among other provisions, this Agreement requires the signatories to conserve existing forests along all streams and shoreline; promote the expansion and connection of contiguous forests; assess the Bay's forest lands; and provide technical and financial assistance to local governments to plan for or revise plans, ordinances and subdivision regulations to provide for the conservation and sustainable use of the forest and agricultural lands. To address these goals, the USDA Forest Service must have additional resources and authority, and that is what my amendment seeks to provide.

This legislation codifies the roles and responsibilities of the USDA Forest Service to the Bay restoration effort. It strengthens existing coordination, technical assistance, forest resource assessment and planning efforts. It authorizes a small grants program to support local agencies, watershed associations and citizen groups in conducting on-the-ground conservation projects. It also establishes a regional applied forestry research and training program to enhance urban, suburban and rural forests in the watershed. Finally it authorizes $3.5 million for each of fiscal years 2004 through 2010, a modest increase in view of the six-state, 64,000 square mile watershed. I urge my colleagues to join me in supporting this legislation.

By Mr. SARBANES (for himself, Mr. WARNER, and Ms. MIKULSKI):

S. 3025. A bill to reauthorize and improve the Chesapeake Bay Environmental Restoration and Protection Program; to the Committee on Environment and Public Works.

Mr. SARBANES. Mr. President, today I am introducing legislation, together with Senators WARNER and MIKULSKI, to reauthorize and enhance the Chesapeake Bay Environmental Protection and Restoration Program. This program, which was first established in Section 510 of the Water Resources Development Act of 1996, Public Law 104–303, authorizes the U.S. Army Corps of Engineers to provide design and construction assistance to State and local authorities in the environmental restoration of the Chesapeake Bay.

In 1994, when I first introduced the legislation to create this program, I spoke about the need for this assistance and the unique capabilities the Army Corps of Engineers brings to the Chesapeake Bay restoration effort. I want to underscore some of those arguments today and the vital importance of continuing and enhancing this program.

The Army Corps of Engineers has been an integral part of the Chesapeake Bay Program for many years. In 1984 the Corps completed one of the most comprehensive investigations of the entire Chesapeake Bay basin, a landmark report which identified many of the serious problems facing the Bay. The Corps played a vital role in the development of the Bay Program's state-of-the-art computer model and has undertaken a variety of major projects in the 6-state Chesapeake Bay watershed including the Poplar Island beneficial use of dredged material project, oyster reef restoration, and removal of blockages to fish passage. The agency is currently conducting investigations on sedimentation, shoreline erosion, and environmental problems in specific watersheds that we hope will result in additional projects to restore the Bay. And I am delighted that the Environment and Public Works Committee has just approved our new Study Resolution directing the Corps to integrate these existing and future work efforts into a coordinated, comprehensive master plan.

But while these projects and studies continue and the master plan is being developed, it is vital that environmental restoration efforts be sustained and expanded. Two years ago, the States in the Chesapeake Bay watershed and the Federal Government conducted an extensive evaluation of cleanup progress since the 1980s and determined that, despite important advances, efforts must be redoubled to restore the integrity of the Chesapeake Bay ecosystem. A new Chesapeake 2000 agreement was signed to serve as a blueprint for the restoration effort over the next decade. To meet the goals established in the new agreement, it is estimated that the local, State and Federal Governments must invest more than $8.5 billion over the course of the next ten years. Nutrient and sediment loads must be significantly reduced, oyster populations must be increased, Submerged Aquatic Vegetation and wetlands must be protected and restored, and remaining blockages to fish passage must be removed, among other actions. As the lead Federal agency in water resource management, the Corps has an essential role to play in this effort.

Since the Chesapeake Bay Environmental Restoration and Protection Program was first established and funding was appropriated, requests from State and local governments for

assistance under the program has grown dramatically. The design-construct nature of this program, which enables the Corps to streamline its process of undertaking on-the-ground environmental restoration projects, is particularly appealing to State and local governments. To date, the Corps of Engineers has constructed or approved $9.3 million in projects under the Chesapeake Bay Environmental Restoration and Protection Program including oyster restoration projects in Virginia, shoreline protection and wetland/sewage treatment projects at Smith Island in Maryland and the upgrade of the Scranton Wastewater Treatment Plant in Pennsylvania to reduce the amount of nutrients delivered to the Chesapeake Bay. These projects have nearly exhausted the current $10 million authorization.

The legislation which I am introducing increases the authorization for this program from $10 million to $30 million. Consistent will all other environmental restoration authorities of the Corps of Engineers, it enables States and local governments to provide all or any portion of the 25 percent non-Federal share required in the form of in-kind services. It also establishes a new small-grants program for local governments and nonprofit organizations to carry out small-scale restoration and protection projects in the Chesapeake Bay watershed. The program would be administered by the National Fish and Wildlife Foundation which has extensive experience and expertise in managing these kinds of grants for other Federal agencies. Ten percent of the funds appropriated each year under this program would be set-aside for these grants.

In view of the great need and the many requests for assistance from the Bay area states, this legislation is clearly warranted and I urge my colleagues to join me in supporting this measure. I ask unanimous consent that the text of legislation be printed in the RECORD.

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

S. 3025

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

SECTION 1. CHESAPEAKE BAY ENVIRONMENTAL RESTORATION AND PROTECTION PROGRAM.

Section 510 of the Water Resources Development Act of 1996 (110 Stat. 3759) is amended—

(1) in subsection (d)(2), by adding at the end the following:

''(C) IN-KIND SERVICES.—A non-Federal interest may provide all or any portion of the non-Federal share referred to in paragraph (1) in the form of in-kind services.'';

(2) by striking subsection (i);

(3) by redesignating subsection (h) as subsection (i);

(4) by inserting after subsection (g) the following:

''(h) SMALL WATERSHED GRANTS.—

''(1) IN GENERAL.—The Secretary shall establish a program, to be administered by the National Fish and Wildlife Foundation, to provide small watershed grants for technical and financial assistance to local governments and nonprofit organizations in the Chesapeake Bay region.

''(2) USE OF FUNDS.—A local government or nonprofit organization that receives a grant under paragraph (1) shall use funds from the grant only for implementation of cooperative tributary basin strategies that address the establishment, restoration, protection, or enhancement of habitat associated with the Chesapeake Bay ecosystem.''; and

(5) by inserting after subsection (i) (as redesignated by paragraph (3)) the following:

''(j) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $30,000,000.

''(2) ANNUAL GRANT EXPENDITURE.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, not more than 10 percent may be used to carry out subsection (h) for the fiscal year.''.

By Mr. SESSIONS:

S. 3026. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process; to the Committee on the Judiciary.

Mr. SESSION. Mr. President, I rise to send to the desk a bill entitled, ''The Arbitration Fairness Act of 2002.'' This bill continues the legislative process that I started in the 106th Congress with the introduction of the Consumer and Employee Arbitration Bill of Rights. The purpose of these bills is to improve the Federal Arbitration Act so that it will remain as a cost-effective means of resolving disputes, but will do so in a fair way. The Arbitration Fairness Act will provide procedural protections to everyone who enters into a contract that contains an arbitration clause. This bill would ensure that consumers, employees, and small businesses that enter into contracts covered by the Federal Arbitration Act will have their disputes resolved in accordance with due process of law, and in a speedy and cost effective manner.

Congress enacted the Federal Arbitration Act in 1925. It has served us as well for three-quarters of a century. Under the Act, if the parties agree to a contract affecting interstate commerce that contains a clause requiring arbitration, the clause will be enforceable in court. In short, the Federal Arbitration Act allows parties to a contract to agree not to take their disputes to court, but to resolve any dispute arising from that contract before a neutral decision-maker, generally selected by a non-profit arbitration organization, such as the American Arbitration Association or the National Arbitration Forum. The parties can generally present evidence and be represented by counsel. And the decision-makers will apply the relevant State law in resolving the dispute. Arbitration is generally quicker and less expensive than going to court.

In recent years, there have been some cases where the arbitration process has not worked well, but thousands of disputes have been fairly and effectively settled by arbitrators. Such a system is even more important because of skyrocketing legal costs where attorneys require large contingent fees. Accordingly, I have opposed piecemeal legislative changes to the act. Instead, I believe that the Senate should approach the Federal Arbitration Act in a comprehensive manner.

The approach of reforming arbitration, rather than abandoning the arbitration process provides several benefits. Arbitration is one of the most cost-effective means of resolving a dispute. Unlike businesses, consumers and employees generally cannot afford a team of lawyers to represent them. And their claims are often not being enough so that a lawyer would take the case on a 25 percent or even a 50 percent contingent fee. In an article in the Columbia Human Rights Law Review, Lewis Maltby, Director, National Task Force on Civil Liberties in the Workplace of the American Civil Liberties Union and a Director of the American Arbitration Association—not die-hard conservative entities—explains how court litigation is too expensive for most employees:

''Even if the client has clearly been wronged and is virtually certain to prevail in court, the attorney will be forced to turn down the case unless there are substantial damages. A survey of plaintiff employment lawyers found that a prospective plaintiff needed to have a minimum of $60,000 in provable damages-not including pain and suffering or other intangible damages-before an attorney would take the case.

Even this, however, does not exhaust the financial obstacles an employee must overcome to secure representation. In light of their risk of losing such cases, many plaintiffs' attorneys require a prospective client to pay a retainer, typically about $3,000. Others require clients to pay out-of-pocket expenses of the case as they are incurred. Expenses in employment discrimination cases can be substantial. Donohue and Siegelman found that expenses in Title VII cases are at least $10,000 and can reach as high as $25,000. Finally, some plaintiffs' attorneys now require a consultation fee, generally $200–$300, just to discuss their situation with a potential client.

''The result of these formidable hurdles in that most people with claims against their employer are unable to obtain counsel, and thus never receive justice. Paul Tobias, founder of the National Employment Lawyer's Association, has testified that ninety-five percent of those who seek help from the private bar with an employment matter do not obtain counsel. Howard's survey of plaintiffs' lawyers produced the same result. A Detroit firm reported that only one of eighty-seven employees who came to them seeking representation was accepted as a client.''

Lewis L. Maltby, Private Justice: Employment Arbitration and Civil Rights, 30 Col. Hum. R.L. Rev. 29, 57–58 (1998).

Without arbitration, the consumer or employee is faced with having to pay a lawyer's hourly rate, which may amount to several thousand dollars to litigate a claim in court, for a broken television that cost $700 new. If this is what consumers and employees are left with, many will have no choice but to drop their claim. This is not right. It is not fair. Thus, Professor Stephen Ware of the Cumberland Law School, states in a recent paper published by the CATO Institution that ''current [arbitration] law is better for all consumers [than an exemption from the FAA] except those few who are especially likely to have large liability claims . . .'' Stephen J. Ware, Arbitration under Assault, CATO Policy Analysis No. 433 p. 10 (2002).

Thus, while some have argued that the Congress should enact exemptions from the FAA for different classes of contracts from automobile franchise contracts to employment contracts, such exemptions would not help the overwhelming majority of the people who could not afford a lawyer to litigate in court. This is where arbitration can give the consumer or employee a cost-effective forum to assert their claim. Thus, before we make exceptions to the FAA for some of the most well to do corporations in our society, I think it is our duty to consider how we can improve the system for those less financially able.

Can we improve the arbitration system? Yes, but we must take a balanced approach. In this approach we should protect the sanctity of legal contracts. In any contract, the parties agree to all the terms and clauses included in the contract document. This includes the arbitration clause. This is basic contract law, and the basic principle upon which the FAA has been supported for 75 years.

But this is not always the case. In certain situations, consumers, employees, or businesses have not been treated fairly. That is what the Arbitration Fairness Act is designed to correct.

The bill will maintain the cost benefits of binding arbitration, but will grant several specific ''due process'' rights to all parties to an arbitration. The bill is based on the consumer and employee due process protocols of the American Arbitration Association that have broad support. The bill provides the following rights: 1. Notice. Under the bill an arbitration clause, to be enforceable, would have to have a heading in large, bold print, would have to state whether arbitration is binding or optional, identify a source that the parties may contact for more information, and state that a consumer could opt out to small claims court.

This will ensure, for example, that consumers who receive credit card notices in the mail will not miss an arbitration clause because it is printed in fine print. Further, it will give all parties means to obtain more information on how to resolve any disputes. Finally, the clause would explain that if a party's claims could otherwise be brought in small claims court, he is free to do so. Small claims court, unlike regular trial court, provides another inexpensive and quick means of dispute resolution.

2. Independent selection of arbitrators. The bill will grant all parties the right to have potential arbitrators disclose relevant information concerning their business ties and employment. All parties to the arbitration will have an equal voice in selecting a neutral arbitrator. This ensures that the large company who sold a consumer a product will not select the arbitrator itself, because the consumer with a grievance will have the right to nominate potential arbitrators too. As a result, the final arbitrator selected will have to have the explicit approval of both parties to the dispute. This means the arbitrator will be a neutral party with no allegiance to either party.

3. Choice of law. The bill grants the non-drafting party, usually the consumer or the employee, the right to have the arbitrator governed by the substantive law that would apply under conflicts of laws principles applicable in the forum in which the non-drafting party resided at the time the contract was entered into. This means that the substantive contract law that would apply in a court where the consumer, employee, or business resides at the time of making the contract will apply in the arbitration. Thus, in a dispute arising from the purchase of a product by an Alabama consumer from an Illinois company, a court would have to determine whether Alabama or Illinois law applied by looking to the language of the contract and to the place the contract was entered into. The bill ensures that an arbitrator will use the same conflict of laws principles that a court would in determining whether Alabama or Illinois law will govern the arbitration proceedings.

4. Representation. The bill grants all parties the right to be represented by counsel at their own expense. Thus, if the claim involves complicated legal issues, the consumer, employee, or small business is free to have his lawyer represent him in the arbitration. Such representation should be substantially less expensive than a trial in court because of the more abbreviated and expedited process of arbitration.

5. Hearing. The bill grants all parties the right to a fair hearing in a forum that is reasonably convenient to the consumer or employee. This would prevent a large company from requiring a consumer, employee, or small business owner to travel across the country to arbitrate his claim and to expend more in travel costs than his claim may be worth.

6. Evidence. The bill grants all parties the right to conduct discovery and to present evidence. This ensures that the arbitrator will have all the facts before him prior to making a decision.

7. Cross examination. The bill grants all parties the right to cross-examine witnesses presented by the other party at the hearing. This allows a party to test the statements of the other party's witnesses and be sure that the evidence before the arbitrator is correct.

8. Record. The bill grants all parties the right to hire a stenographer or tape record the hearing to produce a record. This right is key to proving later that the arbitration proceeding was fair.

9. Timely resolution. The bill grants all parties the right to have an arbitration proceeding to be completed promptly so that they do not have to wait for a year or more to have their claim resolved. Under the bill a defendant must file an answer within 30 days of the filing of the complaint. The arbitrator has 90 days after the answer to hold a hearing. The arbitrator must render a final decision within 30 days after the hearing. Extensions are available in extraordinary circumstances.

10. Written decision. The bill grants all parties the right to a written decision by the arbitrator explaining the resolution of the case and his reasons therefor. If the consumer or employee takes a claim to arbitration, he deserves to have an explanation of why he won or lost.

11. Expenses. The bill grants all parties the right to have an arbitrator provide for reimbursement of arbitration fees in the interests of justice and the reduction, deferral, or waiver of arbitration fees in cases of extreme hardship. It does little good to take a claim to arbitration if the consumer or employee cannot even afford the arbitration fee. This provision ensures that the arbitrator can waive or reduce the fee or make the company reimburse the consumer or employee for a fee if the interests of justice so require.

12. Small claims opt out. The bill grants all parties the right to opt out of arbitration into small claims court if that court has jurisdiction over the claim and the claim does not exceed $50,000.

The bill also provides an effective mechanism for parties to enforce these rights. At any time, if a consumer or employee believes that the other party violated his rights, he may ask and the arbitrator may award a penalty up to the amount of the claim plus attorneys fees. For example, if the defendant party fails to provides discovery to a plaintiff party, the plaintiff can make a motion for fees. The amount of fee award is limited, as it is in court, to the amount of cost incurred by the employee in trying to obtain the information from the company. This principle is taken from Federal Rule of Civil Procedure 37. After the decision, if the losing party believes that the rights granted to him by the Act have been violated, he may file a petition with the Federal district court. If the court finds by clear and convincing evidence that his rights were violated, it may order a new arbitrator appointed. Thus, if a consumer, employee, or small business has an arbitrator that is unfair and this causes him to lose the case,

the plaintiff can obtain another arbitrator.

This bill is an important step to creating a constructive dialog on arbitration reform. This bill will ensure that those who can least afford to go to court can go to a less expensive arbitrator and be treated fairly. It will ensure that every arbitration carried out under the Federal Arbitration Act is completed fairly, promptly, and economically. I look forward to working with my colleagues in the Senate to ensure that consumers, employees, and small business who agree in a contract to arbitrate their claims will be afforded due process of law.

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. 3026

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 ''Arbitration Fairness Act of 2002''.

SEC. 2. ELECTION OF ARBITRATION.

(a) FAIR DISCLOSURE.—In order to be binding on the parties, a contract containing an arbitration clause shall—

(1) have a printed heading in bold, capital letters entitled ''ARBITRATION CLAUSE'', which heading shall be printed in letters not smaller than ½ inch in height;

(2) explicitly state whether participation within the arbitration program is mandatory or optional;

(3) identify a source that a consumer or employee can contact for additional information on costs and fees and on all forms and procedures necessary for effective participation in the arbitration program; and

(4) provide notice that all parties retain the right to resolve a dispute in a small claims court, if such dispute falls within the jurisdiction of that court and the claim is for less than or equal to $50,000 in total damages.

(b) PROCEDURAL RIGHTS.—If a contract provides for the use of arbitration to resolve a dispute arising out of or relating to the contract, each party to the contract shall be afforded the following rights, in addition to any rights provided by the contract:

(1) COMPETENCE AND NEUTRALITY OF ARBITRATOR AND ADMINISTRATIVE PROCESS.—

(A) IN GENERAL.—Each party to the dispute (referred to in this section as a ''party'') shall be entitled to a competent, neutral arbitrator and an independent, neutral administration of the dispute.

(B) ARBITRATOR.—Each party shall have an equal voice in the selection of the arbitrator, who—

(i) shall comply with the Code of Ethics for Arbitrators in Commercial Disputes of the American Arbitration Association and the State bar association of which the arbitrator is a member;

(ii) shall have no personal or financial interest in the results of the proceedings in which the arbitrator is appointed and shall have no relation to the underlying dispute or to the parties or their counsel that may create an appearance of bias; and

(iii) prior to accepting appointment, shall disclose all information that might be relevant to neutrality, including service as an arbitrator or mediator in any past or pending case involving any of the parties or their representatives, or that may prevent a prompt hearing.

(C) ADMINISTRATION.—The arbitration shall be administered by an independent, neutral alternative dispute resolution organization to ensure fairness and neutrality and prevent ex parte communication between parties and the arbitrator. The arbitrator shall have reasonable discretion to conduct the proceeding in consideration of the specific type of industry involved.

(2) APPLICABLE LAW.—In resolving a dispute, the arbitrator—

(A) shall be governed by the same substantive law that would apply under conflict of laws principles applicable in a court of the forum in which the party that is not drafter of the contract resided at the time the contract was entered into; and

(B) shall be empowered to grant whatever relief would be available in court under law or equity.

(3) REPRESENTATION.—Each party shall have the right to be represented by an attorney, or other representative as permitted by State law, at their own expense.

(4) HEARING.—

(A) IN GENERAL.—Each party shall be entitled to a fair arbitration hearing (referred to in this section as a ''hearing'') with adequate notice and an opportunity to be heard.

(B) ELECTRONIC OR TELEPHONIC MEANS.—Subject to subparagraph (C), in order to reduce cost, the arbitrator may hold a hearing by electronic or telephonic means or by a submission of documents.

(C) FACE-TO-FACE MEETING.—Each party shall have the right to require a face-to-face hearing, which hearing shall be held at a location that is reasonably convenient for the party who did not draft the contract unless in the interest of fairness the arbitrator determines otherwise, in which case the arbitrator shall use the process described in section 1391 of title 28, United States Code, to determine the venue for the hearing.

(5) EVIDENCE.—With respect to any hearing—

(A) each party shall have the right to present evidence at the hearing and, for this purpose, each party shall grant access to all information reasonably relevant to the dispute to the other parties, subject to any applicable privilege or other limitation on discovery under applicable State law;

(B) consistent with the expedited nature of arbitration, relevant and necessary prehearing depositions shall be available to each party at the direction of the arbitrator; and

(C) the arbitrator shall—

(i) make reasonable efforts to maintain the privacy of the hearing to the extent permitted by applicable State law; and

(ii) consider appropriate claims of privilege and confidentiality in addressing evidentiary issues.

(6) CROSS EXAMINATION.—Each party shall have the right to cross examine witnesses presented by the other parties at a hearing.

(7) RECORD OF PROCEEDING.—Any party seeking a stenographic record of a hearing shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements not less than 3 days in advance of the hearing. The requesting party or parties shall pay the costs of obtaining the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it shall be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

(8) TIMELY RESOLUTION.—Upon submission of a complaint by the claimant, the respondent shall have 30 days to file an answer. Thereafter, the arbitrator shall direct each party to file documents and to provide evidence in a timely manner so that the hearing may be held not later than 90 days after the filing of the answer. In extraordinary circumstances, including multiparty, multidistrict, or complex litigation, the arbitrator may grant a limited extension of these time limits to a party, or the parties may agree to an extension. The arbitrator shall notify each party of its decision not later than 30 days after the hearing.

(9) WRITTEN DECISION.—The arbitrator shall provide each party with a written explanation of the factual and legal basis for the decision. This written decision shall describe the application of an identified contract term, statute, or legal precedent. The decision of the arbitrator shall be final and binding, subject only to the review provisions in subsection (d).

(10) EXPENSES.—The arbitrator or independent arbitration administration organization, as applicable, shall have the authority to—

(A) provide for reimbursement of arbitration fees to the claimant, in whole or in part, as part of the remedy in accordance with applicable law or in the interests of justice; and

(B) waive, defer, or reduce any fee or charge due from the claimant in the event of extreme hardship.

(11) SMALL CLAIMS OPT OUT.—

(A) IN GENERAL.—Each party shall have the right to opt out of binding arbitration and into the small claims court for the forum, if such court has jurisdiction over the claim. For purposes of this paragraph, no court with jurisdiction to hear claims in excess of $50,000 shall be considered to be a small claims court.

(B) EXCEPTION.—Where a complaint in small claims court is subsequently amended to exceed the lesser of the jurisdictional amount or a claim for $50,000 in total damages, the small claims court exemption of this paragraph shall not apply and the parties are required to arbitrate.

(c) DENIAL OF RIGHTS.—

(1) DENIAL OF RIGHTS BY PARTY MISCONDUCT.—

(A) IN GENERAL.—At any time during an arbitration proceeding, any party may file a motion with the arbitrator asserting that the other party has deprived the movant of 1 or more rights granted by this section and seeking relief.

(B) AWARD BY ARBITRATOR.—If the arbitrator determines that the movant has been deprived of a right granted by this section by the other party, the arbitrator shall award the movant a monetary amount, which shall not exceed the reasonable expenses incurred by the movant in filing the motion, including attorneys' fees, unless the arbitrator finds that—

(i) the motion was filed without the movant's first making a good faith effort to obtain discovery or the realization of another right granted by this section;

(ii) the opposing party's nondisclosure, failure to respond, response, or objection was substantially justified; or

(iii) the circumstances otherwise make an award of expenses unjust.

(2) DENIAL OF RIGHTS BY ARBITRATOR.—A losing party in an arbitration may file a petition in the district court of the United States in the forum in which the party that did not draft the contract resided at the time the contract was entered into to assert that the arbitrator violated 1 or more of the rights granted to the party by this section and to seek relief. In order to grant the petition, the court must find clear and convincing evidence that 1 or more actions or omissions of the arbitrator resulted in a deprivation of a right of the petitioner under

this section that was not harmless. If such a finding is made, the court shall order a rehearing before a new arbitrator selected in the same manner as the original arbitrator as the exclusive judicial remedy provided by this section.

(d) EFFECTIVE DATE.—This section shall apply to any contract entered into after the date that is 6 months after the date of enactment of this Act.

SEC. 3. LIMITATION ON CLAIMS.

Except as otherwise expressly provided in this Act, nothing in this Act may be construed to be the basis for any claim in law or equity.

AMENDMENTS SUBMITTED & PROPOSED

SA 4847. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4848. Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. REID, Mr. JEFFORDS, Mr. CARPER, and Mr. TORRICELLI) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4849. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4847. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4438 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002''.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into 5 divisions as follows:

(1) Division A—National Homeland Security and Combating Terrorism.

(2) Division B—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) Division C—Federal Workforce Improvement.

(4) Division D—E-Government Act of 2002.

(5) Division E—Flight and Cabin Security on Passenger Aircraft.

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

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

Sec. 100. Definitions.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security.
Sec. 102. Secretary of Homeland Security.
Sec. 103. Deputy Secretary of Homeland Security.
Sec. 104. Under Secretary for Management.
Sec. 105. Assistant Secretaries.
Sec. 106. Inspector General.
Sec. 107. Chief Financial Officer.
Sec. 108. Chief Information Officer.
Sec. 109. General Counsel.
Sec. 110. Civil Rights Officer.
Sec. 111. Privacy Officer.
Sec. 112. Chief Human Capital Officer.
Sec. 113. Office of International Affairs.
Sec. 114. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection.
Sec. 132. Directorate of Intelligence.
Sec. 133. Directorate of Critical Infrastructure Protection.
Sec. 134. Directorate of Emergency Preparedness and Response.
Sec. 135. Directorate of Science and Technology.
Sec. 136. Directorate of Immigration Affairs.
Sec. 137. Office for State and Local Government Coordination.
Sec. 138. United States Secret Service.
Sec. 139. Border Coordination Working Group.
Sec. 140. Office for National Capital Region Coordination.
Sec. 141. Executive Schedule positions.
Sec. 142. Preserving Coast Guard mission performance.

Subtitle C—National Emergency Preparedness Enhancement

Sec. 151. Short title.
Sec. 152. Preparedness information and education.
Sec. 153. Pilot program.
Sec. 154. Designation of National Emergency Preparedness Week.

Subtitle D—Miscellaneous Provisions

Sec. 161. National Bio-Weapons Defense Analysis Center.
Sec. 162. Review of food safety.
Sec. 163. Exchange of employees between agencies and State or local governments.
Sec. 164. Whistleblower protection for Federal employees who are airport security screeners.
Sec. 165. Whistleblower protection for certain airport employees.
Sec. 166. Bioterrorism preparedness and response division.
Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 168. Rail security enhancements.
Sec. 169. Grants for firefighting personnel.
Sec. 170. Review of transportation security enhancements.
Sec. 171. Interoperability of information systems.
Sec. 172. Extension of customs user fees.
Sec. 173. Conforming amendments regarding laws administered by the Secretary of Veterans Affairs.
Sec. 174. Prohibition on contracts with corporate expatriates.
Sec. 175. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 176. Coordination of information and information technology.

Subtitle E—Transition Provisions

Sec. 181. Definitions.
Sec. 182. Transfer of agencies.
Sec. 183. Transitional authorities.
Sec. 184. Incidental transfers and transfer of related functions.
Sec. 185. Implementation progress reports and legislative recommendations.
Sec. 186. Transfer and allocation.
Sec. 187. Savings provisions.
Sec. 188. Transition plan.
Sec. 189. Use of appropriated funds.

Subtitle F—Administrative Provisions

Sec. 191. Reorganizations and delegations.
Sec. 192. Reporting requirements.
Sec. 193. Environmental protection, safety, and health requirements.
Sec. 194. Labor standards.
Sec. 195. Procurement of temporary and intermittent services.
Sec. 196. Preserving non-homeland security mission performance.
Sec. 197. Future Years Homeland Security Program.
Sec. 198. Protection of voluntarily furnished confidential information.
Sec. 199. Establishment of human resources management system.
Sec. 199A. Labor-management relations.
Sec. 199B. Authorization of appropriations.

TITLE II—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

Sec. 201. Law enforcement powers of Inspector General agents.

TITLE III—FEDERAL EMERGENCY PROCUREMENT FLEXIBILITY

Subtitle A—Temporary Flexibility for Certain Procurements

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