S. RES. 30

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Res. 30, a resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

S. RES. 200

At the request of Mr. JOHNSON, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Oregon (Mr. WYDEN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Nebraska (Mr. NELSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. Res. 200, a resolution expressing the sense of the Senate that Congress should adopt a conference agreement on the child tax credit and on tax relief for military personnel.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932-33.

S. RES. 204

At the request of Mr. BIDEN, the names of the Senator from North Carolina (Mrs. DOLE), the Senator from Texas (Mr. CORNYN), the Senator from New York (Mr. SCHUMER), the Senator from New Jersey (Mr. CORZINE) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. Res. 204, a resolution designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

AMENDMENT NO. 1405

At the request of Mr. MILLER, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of amendment No. 1405 intended to be proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUNNING (for himself, Mr. BREAUX, and Mr. BOND):

S. 1506. A bill to amend the Internal Revenue Code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce legislation that will resolve a longstanding inequity in the tax treatment of U.S. distilled spirits that penalizes the wholesalers, and in some cases suppliers, of these products.

Under current law, wholesalers of distilled spirits are not required to pay the Federal excise tax on imported spirits until after the product is removed from a bonded warehouse for sale to a retailer.

In contrast, the tax on domestically produced spirits is included as part of the purchase price and passed on from the supplier to wholesaler. After factoring in the Federal excise tax (FET)—which is $13.50 per proof gallon—domestically produced spirits can cost wholesalers 40 percent more to purchase than comparable imported spirits.

In some instances, wholesalers and even suppliers can carry this tax-paid inventory for an average of 60 days before selling it to a retailer. Interest charges—more commonly referred to as float—resulting from financing the Federal excise tax can be quite considerable.

For example, at a 5 percent interest rate on the sale of 100,000 cases of domestic spirits, a wholesaler will incur finance charges of $21,106.85 for loans related to underwriting the cost of paying the Federal excise tax. It is important to note that it is not uncommon for wholesalers to sell a million or more cases per year of domestic spirits.

The costs associated with financing Federal excise taxes amount to a tax on a tax, making the effective rate of the Federal excise tax for domestic spirits much higher than $13.50 per proof gallon.

The Distilled Spirits Tax Equity Act would give wholesalers and suppliers in bailment states a tax credit towards the cost of financing the FET for domestically produced products.

I believe this legislation is fundamentally fair and will help protect and create jobs for the wholesale tier in Kentucky and other States. However, I wish to emphasize that I will reject any connection between a repeal of Section 5010 within the Internal Revenue Code or an increase in federal taxes for distilled spirits. Tax equity for one tier should not be achieved by placing additional burden on other tiers within the same industry.

My colleagues, Senators BOND and BREAUX join me in introducing this legislation, which the Joint Tax Committee estimates would reduce Federal revenues by approximately $249 million over ten years. Congressmen COLLINS and NEAL have introduced similar legislation that has garnered significant support in the House of Representatives. I urge my colleagues to support this legislation when it comes before the Senate.

By Mr. FEINGOLD (for himself, Mr. BINGAMAN, Mr. KENNEDY, Ms. CANTWELL, Mr. DURBIN, Mr. WYDEN, Mr. CORZINE, Mr. AKAKA, and Mr. JEFFORDS):

S. 1507. A bill to protect privacy by limiting the access of the government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I introduce the Library, Bookseller, and Personal Records Privacy Act.

This bill would amend the Patriot Act to protect the privacy of law-abiding Americans. It would set reasonable limits on the Federal Government's access to library, bookseller, medical, and other sensitive, personal information under the Foreign Intelligence Surveillance Act and related foreign intelligence authority.

I am pleased that several of my distinguished colleagues—Senators BINGAMAN, KENNEDY, CANTWELL, DURBIN, WYDEN, CORZINE, AKAKA, and JEFFORDS—have joined me as original cosponsors of this important legislation.

I and millions of other patriotic Americans love our country and support our military men and women in their difficult missions abroad, but worry about the fate of our Constitution here at home.

Much of our Nation's strength comes from our constitutional liberties and respect for the rule of law. That is what has kept us free for our two and a quarter century history. Our constitutional freedoms, our American values, are what make our country worth fighting for in the fight against terrorism.

Here at home, there is no question that the FBI needs ample resources and legal authority to prevent future acts of terrorism. But the Patriot Act went too far when it comes to the government's access to personal information about law-abiding Americans.

Even though in the end I opposed the Patriot Act, there were several provisions that I did support. For example, Congress was right to expand the category of business records that the FBI could obtain by subpoena pursuant to the Foreign Intelligence Surveillance Act. Prior to the Patriot Act, the FBI could seek a court order to obtain only travel records—such as airline, hotel, and car rental records—and records maintained by storage facilities. The Patriot Act allows any business records to be subpoenaed. I don't quibble with that change.

But what my colleagues and I do find problematic—and an increasing number of Americans who value their privacy and First Amendment rights agree with us—is that the current law allows the FBI broad, almost unfettered access to personal information about law-abiding Americans who have no connection to terrorism or spying.

Section 215 of the Patriot Act requires the FBI to show in an application to the court for a subpoena that the documents are ''sought for'' an international terrorism or foreign intelligence investigation. There is no requirement that the FBI make a showing of individualized suspicion that the documents relate to a suspected terrorism or spy.

In other words, under current law, the FBI could serve a subpoena on a library for all the borrowing records of its patrons or on a bookseller for the

purchasing records of its customers simply by asserting that they want the records for a terrorism investigation.

During the last year, librarians and booksellers have become increasingly concerned by the potential for abuse of this law. I was pleased to stand with the American Booksellers Association and the Free Expression Network a little over a year ago when we first started to raise these concerns.

Librarians and booksellers are concerned that under the Patriot Act, the FBI could seize records from libraries and booksellers in order to monitor what books Americans have purchased or borrowed, or who has used a library's or bookstore's internet computer stations, even if there is no evidence that the person is a terrorist or spy, or has any connection to a terrorist or spy.

These concerns are so strong, that some librarians across the country have taken the unusual step of destroying records of patrons' book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the Federal Government.

As a librarian in California said, ''We felt strongly that this had to be done. . . . The government has never had this kind of power before. It feels like Big Brother.''

And as the executive director of the American Library Association said, ''This law is dangerous. . . . I read murder mysteries—does that make me a murderer? I read spy stories—does that mean I'm a spy? There's no clear link between a person's intellectual pursuits and their actions.''

The American people do not know how many or what kind of requests federal agents have made for library records under the Patriot Act. The Justice Department refuses to release that information to the public.

But in a survey released by the University of Illinois at Urbana-Champaign, about 550 libraries around the Nation reported having received requests from Federal or local law enforcement during the past year. About half of the libraries said they complied with the law enforcement request, and another half indicated that they had not.

Americans don't know much about these incidents, because the law also contains a provision that prohibits anyone who receives a subpoena from disclosing that fact to anyone.

David Schwartz, president of Harry W. Schwartz Bookshops, the oldest and largest independent bookseller in Milwaukee, summed up well the American values at stake when he said: ''The FBI already has significant subpoena powers to obtain records. There is no need for the government to invade a person's privacy in this way. This is a uniquely un-American tool, and it should be rejected. The books we read are a very private part of our lives. People could stop buying books, and they could be terrified into silence.''

Afraid to read books, terrified into silence. Is that the America we want? Is that the America where we'd like to live? I don't think so. And I hope my colleagues will agree.

It is time to reconsider those provisions of the Patriot Act that are un-American and, frankly, un-patriotic.

Bu my concerns with the Patriot Act go beyond library and bookseller records. Under section 215 of the Patriot Act, the FBI could seek any records maintained by a business. These business records could contain sensitive, personal information—for example, medical records maintained by a doctor or hospital or credit records maintained by a credit agency. All the FBI would have to do is simply assert that the records are ''sought for'' its terrorism or foreign intelligence investigation.

Section 215 of the Patriot Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library, bookstore, medical, financial, or other records containing personal information. Prudent safeguards are need to protect these legitimate privacy interests.

The Library, Bookseller, and Personal Records Privacy Act is a reasonable solution. It would restore a pre-Patriot Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy.

My bill will not prevent the FBI from doing its job. My bill recognizes that the post-September 11 world is a different world. There are circumstances when the FBI should legitimately have access to library, bookseller, or other personal information.

I would like to take a moment to explain how the safeguard in my bill would be applied. Suppose the FBI is conducting an investigation of an international terrorist organization. It has information that suspected members of the group live in a particular neighborhood. The FBI would like to serve a subpoena on the library in the suspects' neighborhood. Under current law, the FBI could decide to ask the library for all records concerning anyone who has ever borrowed a book or used a computer, and what books were borrowed, simply by asserting that the documents are sought for a terrorism investigation. But under my bill, the FBI could not do so. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could subpoena only those library records—such as borrowing records or computer sign-in logs—that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

So, under my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add, that if, as the Justice Department says, the FBI is using its Patriot Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill.

The second part of my bill would address privacy concerns with another Federal law enforcement power expanded by the Patriot Act—the FBI's national security letter authority, or what is sometimes referred to as ''administrative subpoena'' authority because the FBI does not need court approval to use this power.

My bill would amend section 505 of the Patriot Act. Part of this section relates to the production of records maintained by electronic communications providers. Libraries or bookstores with internet access for customers could be deemed ''electronic communication providers'' and therefore be subject to a request by the FBI under its administrative subpoena authority.

As I mentioned earlier, some librarians are so concerned about the potential for abuse by the FBI that they have taken matters into their own hands before the FBI knocks on their door. Some librarians have begun shredding on a daily basis sign-in logs and other documents relating to the public's use of library computer terminals to access the Internet.

Again, safeguards are needed to ensure that any individual who accesses the internet at a library or bookstore does not automatically give up all expectations of privacy. Like the section 215 I've discussed, my bill would require an individualized showing by the FBI of how the records of internet usage maintained by a library or bookseller pertain to a suspected terrorist or spy.

Yes, the American people want the FBI to be focused on preventing terrorism. And, yes, it may make sense to make some changes to the law to allow the FBI access to the information that it needs to prevent terrorism. But we do not need to change the values that constitute who we are as a nation in order to protect ourselves from terrorism. We can protect both our nation and our privacy and civil liberties.

An increasing number of Americans are beginning to understand that the Patriot Act went too far. Three States and over 130 cities and counties across the country have now passed resolutions expressing opposition to the Patriot Act. And it's not just the Berkeleys and Madisons of the Nation, but other States and communities with strong libertarian values, such as Alaska and cities in Montana, have passed such resolutions.

I have many concerns with the Patriot Act. I am not seeking to repeal it, in whole or in part. My colleagues and I are only seeking to modify two provisions that pose serious potential for abuse.

The privacy of law-abiding Americans is at stake. Congress should act to

protect our privacy. And my bill is a reasonable approach to do just that.

I urge my colleagues to join me and support the Library, Bookseller, and Personal Records Privacy Act.

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. 1507

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 ''Library, Bookseller, and Personal Records Privacy Act''.

SEC. 2. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) APPLICATIONS FOR ORDERS.—Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) shall specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.''.

(b) ORDERS.—Subsection (c)(1) of that section is amended by striking ''finds'' and all that follows and inserting ''finds that—

''(A) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and

''(B) the application meets the other requirements of this section.''.

(c) OVERSIGHT OF REQUESTS FOR PRODUCTION OF RECORDS.—Section 502 of that Act (50 U.S.C. 1862) is amended—

(1) in subsection (a), by striking ''the Permanent'' and all that follows through ''the Senate'' and inserting ''the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate''; and

(2) in subsection (b), by striking ''On a semiannual basis,'' and all that follows through ''a report setting forth'' and inserting ''The report of the Attorney General to the Committees on the Judiciary of the House of Representatives and the Senate under subsection (a) shall set forth''.

SEC. 3. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO INFORMATION ON COMPUTER USERS AT BOOKSELLERS AND LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.

(a) IN GENERAL.—Section 2709 of title 18, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

''(e) RECORDS OF BOOKSELLERS AND LIBRARIES.—(1) When a request under this section is made to a bookseller or library, the certification required by subsection (b) shall also specify that there are specific and articulable facts giving reason to believe that the person or entity to whom the records pertain is a foreign power or an agent of a foreign power.

''(2) In this subsection:

''(A) The term 'bookseller' means a person or entity engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication in print or digitally.

''(B) The term 'library' means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2))) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.

''(C) The terms 'foreign power' and 'agent of a foreign power' have the meaning given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).''.

(b) SUNSET OF CERTAIN MODIFICATIONS ON ACCESS.—Section 224(a) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 295) is amended by inserting ''and section 505'' after ''by those sections)''.

By Mr. HAGEL (for himself, Mr. SUNUNU, and Mrs. DOLE):

S. 1508. A bill to address regulation of secondary mortgage market enterprises, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HAGEL. Mr. President, I rise today to introduce, along with my colleagues Senator SUNUNU and Senator DOLE, the Federal Enterprise Regulatory Reform Act of 2003. This is needed regulatory reform at a critical time for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

There is no doubt that our housing government sponsored enterprises (GSEs) have been successful in carrying out their mission of creating a secondary market for home mortgages. The housing market has remained strong through tough economic times, and homeownership in this country is at an all-time high.

The housing GSEs, however, are uncommon institutions with a unique set of responsibilities and stakeholders. Fannie and Freddie are chartered by Congress, limited in scope, and are subject to Congressional mandates, yet they are publicly traded companies with all the earnings pressure that Wall Street demands. Additionally, Fannie and Freddie enjoy an implicit guarantee by the Federal Government that has aided them in developing substantial clout on Wall Street. With their influence in the markets, their ability to raise capital at near-Treasury Bill rates, and their use of the most sophisticated portfolio management tools, Fannie and Freddie today are no longer simply secondary market facilitators for mortgages.

Freddie Mac's recent disclosure of management failures and accounting deficiencies resulting in upwards of $4.5 billion in understated earnings precipitated the need for Congress to exercise its oversight of the GSEs. The Senate Banking Committee has held one hearing already and more are planned after our August recess.

If we are to continue to provide GSEs with the framework to operate under an implied government backing, I believe that they should be held to a higher standard than private organizations and subject to more scrutiny than the private sector. Furthermore, I believe it is possible to realign oversight and operating rules for Fannie and Freddie without jeopardizing the strong housing market that America enjoys today.

It is my view that the Office of Federal Housing Enterprise Oversight (OFHEO) has not been given the tools needed to effectively regulate Fannie Mae and Freddie Mac. Our legislation would create a new, stronger regulator in the Department of the Treasury. Treasury regulates banks and other financial institutions through the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS), and it has the experience and expertise needed to supervise Fannie Mae and Freddie Mac. Our bill also would provide the new regulator with enhanced regulatory flexibility and enforcement tools like those afforded to OCC and OTS. Furthermore, the bill would: give OFES oversight of Fannie Mae and Freddie Mac's ''mission'' as well as safety and soundness; give OFES authority to regulate the type and amount of non-mission related assets Fannie Mae and Freddie Mac can hold; give OFES enhanced enforcement powers much like those of other financial regulators; fund OFES through assessments instead of through Congressional appropriations; require several government studies, including one on the risk implications of GSEs purchasing their own mortgage backed securities, one on the feasibility of merging OFES with the Federal Housing Finance Board (FHFB), and one on the feasibility of consolidating OFES with the Office of Thrift Supervision (OTS).

This reform is important to restoring and maintaining the confidence that investors and the markets require. In light of the recent problems at Freddie Mac, it is even more important. I urge my colleagues to support this reform effort and invite them to cosponsor our bill.

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. 1508

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Enterprise Regulatory Reform Act of 2003''.

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

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND FREDDIE MAC

Subtitle A—Improvement of Supervision

Sec. 101. Establishment of Office of Federal Enterprise Supervision in the Department of the Treasury.
Sec. 102. Duties and authorities of Director and HUD.
Sec. 103. Examiners and accountants.
Sec. 104. Regulations.
Sec. 105. Assessments.
Sec. 106. Independence of Director in congressional testimony and recommendations.
Sec. 107. Limitation on nonmission-related assets.
Sec. 108. Reports.
Sec. 109. Risk-based capital test for enterprises.
Sec. 110. Minimum and critical capital levels.
Sec. 111. Definitions.

Subtitle B—Prompt Corrective Action

Sec. 131. Capital classifications.
Sec. 132. Supervisory actions applicable to undercapitalized enterprises.
Sec. 133. Supervisory actions applicable to significantly undercapitalized enterprises.

Subtitle C—Enforcement Actions

Sec. 151. Cease-and-desist proceedings.
Sec. 152. Temporary cease-and-desist proceedings.
Sec. 153. Removal and prohibition authority.
Sec. 154. Enforcement and jurisdiction.
Sec. 155. Civil money penalties.
Sec. 156. Criminal penalty.

Subtitle D—Reports to Congress

Sec. 161. Studies and reports.

Subtitle E—General Provisions

Sec. 171. Conforming and technical amendments.
Sec. 172. Effective date.

TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

Sec. 201. Abolishment of OFHEO.
Sec. 202. Continuation and coordination of certain regulations.
Sec. 203. Transfer and rights of employees of OFHEO.
Sec. 204. Transfer of property and facilities.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND FREDDIE MAC

Subtitle A—Improvement of Supervision

SEC. 101. ESTABLISHMENT OF OFFICE OF FEDERAL ENTERPRISE SUPERVISION IN THE DEPARTMENT OF THE TREASURY.

(a) IN GENERAL.—Part 1 of Subtitle A of title XIII of the Housing and Community Development Act of 1992 is amended by striking sections 1311 and 1312 (12 U.S.C. 4511, 4512) and inserting the following:

''SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL ENTERPRISE SUPERVISION.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established the Office of Federal Enterprise Supervision, which shall be an office in the Department of the Treasury.

''(2) AUTHORITY.—The Office shall succeed to the authority of the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the general regulatory and any other authority of the Secretary of Housing and Urban Development with respect to the enterprises (except as specifically provided otherwise in this Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and any other provision of Federal law).

''(b) PROHIBITION OF MERGER OF OFFICE.—Notwithstanding any other provision of this law, the Secretary of the Treasury may not merge or consolidate the Office, or any of the functions or responsibilities of the Office, with any function or program administered by the Secretary.

''(c) SAVINGS PROVISION.—The authority of the Director to take actions under subtitles B and C does not in any way limit the general supervisory and regulatory authority granted to the Director under subsection (a).

''SEC. 1312. DIRECTOR.

''(a) ESTABLISHMENT OF POSITION.—There is established the position of the Director of the Office of Federal Enterprise Supervision, who shall be the head of the Office.

''(b) APPOINTMENT; TERM.—

''(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

''(2) TERM.—The Director shall be appointed for a term of 5 years.

''(3) VACANCY.—

''(A) IN GENERAL.—A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established under paragraph (1).

''(B) TERM .—The Director appointed to fill a vacancy under subparagraph (A) shall be appointed only for the remainder of such term.

''(4) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which the individual was appointed until a successor Director has been appointed.

''(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development on the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, shall be the Director until the date on which that individual's term as Director of the Office of Federal Housing Enterprise Oversight would have expired.

''(c) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any enterprise, nor hold any office, position, or employment in any enterprise.''.

(b) APPOINTMENT OF DIRECTOR.—Notwithstanding the effective date under section 172 or any other provision of law, the President may, at any time after the date of enactment of this Act, appoint an individual to serve as the Director in accordance with the provisions of the amendment made by subsection (a) of this section.

SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR AND HUD.

(a) IN GENERAL.—Section 1313 of the Housing and Community Development Act of 1992 (12 U.S.C. 4513) is amended to read as follows:

''SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

''(a) DUTIES.—

''(1) PRINCIPAL DUTIES.—The principal duties of the Director shall be to ensure that the enterprises—

''(A) operate in a financially safe and sound manner;

''(B) carry out their missions in a financially safe and sound manner and only through activities that have been authorized under, and are consistent with the purposes of, the provisions of Federal law that charter the enterprises; and

''(C) remain adequately capitalized.

''(2) OTHER DUTIES.—To the extent consistent with paragraph (1), the duty of the Director shall be to exercise general supervisory and regulatory authority over the enterprises, in accordance with this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and any other provisions of law.

''(b) AUTHORITY EXCLUSIVE OF SECRETARY.—Except as specifically provided under this Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of Federal law, the authority of the Director with respect to the enterprises shall not be subject to the review, approval, or intervention of the Secretary of the Treasury.

''(c) DELEGATION OF AUTHORITY.—The Director may delegate to officers and employees of the Director any of the functions, powers, and duties of the Director, with respect to supervision and regulation of the enterprises, as the Director considers appropriate.''.

(b) PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.—Part 1 of Subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.) is amended by adding at the end the following:

''SEC. 1319H. PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.

''(a) IN GENERAL.—The Director shall require each enterprise to obtain the approval of the Director for any new program of the enterprise before implementing the program.

''(b) STANDARD FOR APPROVAL.—The Director shall approve any new program of an enterprise for purposes of subsection (a) unless—

''(1) in the case of a new program of the Federal National Mortgage Association, the Director determines that the program is not authorized under section 304 or paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b));

''(2) in the case of a new program of the Federal Home Loan Mortgage Corporation, the Director determines that the program is not authorized under paragraph (1), (4), or (5) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.); or

''(3) the Director determines that the new program is not in the public interest.

''(c) PROCEDURE FOR APPROVAL.—

''(1) SUBMISSION OF REQUEST.—An enterprise shall submit to the Director a written request for approval of a new program under subparagraph (A) that describes the program in such form as prescribed by order or regulation of the Director.

''(2) RESPONSE.—

''(A) IN GENERAL.—Not later than 45 days after the date of submission of a request for approval under paragraph (1), the Director shall—

''(i) approve the request; or

''(ii) deny the request and submit a report explaining the reasons for the denial to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

''(B) EXTENSION.—The Director may extend the time period under subparagraph (A) for a single additional 15 day period only if the Director requests additional information from the enterprise.

''(3) FAILURE TO RESPOND.—If the Director fails to approve the request or fails to submit a report under paragraph (2)(A)(ii) during the period provided, the request shall be considered to have been approved by the Director.

''(4) REVIEW OF DISAPPROVAL.—

''(A) SUBMISSION OF NEW INFORMATION.—If the Director submits a report under paragraph (2)(A)(ii) denying a request for reasons listed under paragraph (1) or (2) of subsection

(b), the Director shall allow the enterprise to submit new information in support of the request for approval.

''(B) NEW PROGRAMS NOT IN THE PUBLIC INTEREST.—If the Director submits a report under paragraph (2)(A)(ii) denying a request after finding that the program is not in the public interest under subsection (b)(3), the Director shall provide the enterprise with notice and opportunity for a hearing on the record regarding such denial.''.

(c) REPEAL OF HUD AUTHORITY.—Part 2 of Subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C.4501 et seq.) is amended by striking sections 1321 and 1322.

(d) AUTHORITY OF HUD FOR HOUSING GOALS.—

(1) IN GENERAL.—Section 1331 of the Housing and Community Development Act of 1992 (12 U.S.C. 4561) is amended—

(A) in the first sentence of subsection (a), by inserting ''of Housing and Urban Development'' after ''The Secretary''; and

(B) by adding at the end the following:

''(d) DEFINITION.—For purposes of this part, the term 'Secretary' means the Secretary of Housing and Urban Development.''.

(2) ANNUAL REPORT ON HOUSING GOALS.—Section 1324 of the Housing and Community Development Act of 1992 (12 U.S.C. 4544) is amended by inserting ''of Housing and Urban Development'' after ''Secretary'' each place such term appears.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) FANNIE MAE.—Section 302(b)(6) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716(b)(6)) is amended by striking ''Secretary under section 1322'' and inserting ''Director under section 1319H''.

(2) FREDDIE MAC.—Section 305(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(c)) is amended by striking ''Secretary under section 1322'' and inserting ''Director under section 1319H''.

(3) FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(A) in paragraph (5), by striking the period; and

(B) by adding at the end the following:

''(6) the Director of the Office of Federal Enterprise Supervision.''.

SEC. 103. EXAMINERS AND ACCOUNTANTS.

(a) EXAMINATIONS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended—

(1) in the second sentence of subsection (c), by striking ''The'' and inserting ''During the 3-year period that begins upon the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the''; and

(2) in subsection (d), by striking ''Federal Reserve banks'' and inserting ''Director of the Office of Thrift Supervision''.

(b) ENHANCED AUTHORITY TO HIRE EXAMINERS AND ACCOUNTANTS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended by adding at the end the following:

''(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS, AND EXAMINERS.—

''(1) APPLICABILITY.—This section applies with respect to any position of examiner, accountant, and economist at the Office, with respect to supervision and regulation of the enterprises, that is in the competitive service.

''(2) APPOINTMENT AUTHORITY.—

''(A) IN GENERAL.—The Director may appoint candidates to any position described in paragraph (1)—

''(i) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

''(ii) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

''(B) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under this paragraph shall not be considered to cause such position to be converted from the competitive service to the excepted service.

''(3) REPORTS.—

''(A) IN GENERAL.—Not later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Director shall submit a report with respect to its exercise of the authority granted by paragraph (2) during such fiscal years to the—

''(i) Committee on Government Reform and the Committee on Financial Services of the House of Representatives; and

''(ii) Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(B) CONTENTS.—The reports submitted under subparagraph (A) shall describe the changes in the hiring process authorized by paragraph (2), including relevant information related to—

''(i) the quality of candidates;

''(ii) the procedures used by the Director to select candidates through the streamlined hiring process;

''(iii) the numbers, types, and grades of employees hired under the authority;

''(iv) any benefits or shortcomings associated with the use of the authority;

''(v) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

''(vi) the way in which managers were trained in the administration of the streamlined hiring system.''.

SEC. 104. REGULATIONS.

Section 1319G of the Housing and Community Development Act of 1992 (12 U.S.C. 4526) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) AUTHORITY.—The Director shall issue any regulations and orders necessary to carry out the duties of the Director, with respect to supervision and regulation of the enterprises, under this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), and the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and to ensure that the purposes of this title and such Acts are accomplished.''; and

(2) in subsection (c), by striking ''Committee on Banking, Finance and Urban Affairs'' and inserting ''Committee on Financial Services''.

SEC. 105. ASSESSMENTS.

Section 1316 of the Housing and Community Development Act of 1992 (12 U.S.C. 4516) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) ANNUAL ASSESSMENTS.—The Director shall establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for all reasonable costs and expenses of the Office, including—

''(1) the expenses of any examinations under section 1317; and

''(2) the expenses of obtaining any reviews and credit assessments under subsection section 1319.'';

(2) in subsection (b), in paragraph (2), by moving the margin 2 ems to the right;

(3) in subsection (c), by adding at the end the following: ''The Director may adjust the amounts of any semiannual assessments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by an enterprise, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under subtitles B and C for an enterprise are borne only by that enterprise.'';

(4) in subsection (f), by striking ''Any assessments collected'' and all that follows and inserting the following: ''Notwithstanding any other provision of law, any assessments collected by the Director pursuant to this section shall be deposited in the Fund in an account for the Director. Any amounts in the Fund are hereby made available, without fiscal year limitation, to the Director (to the extent of amounts in the Director's account) for carrying out the supervisory and regulatory responsibilities of the Director, with respect to the enterprises, including any necessary administrative and nonadministrative expenses of the Director in carrying out the purposes of this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), and the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).''; and

(5) in subsection (g), by striking paragraphs (1) and (2) and inserting the following:

''(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Director shall submit a copy of the financial operating plans and forecasts for the Office to the Director of the Office of Management and Budget.

''(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Director shall submit a copy of the report of the results of the operations of the Office during such period to the Director of the Office of Management and Budget.''.

SEC. 106. INDEPENDENCE OF DIRECTOR IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS.

Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury,'' after ''the Federal Housing Finance Board,''.

SEC. 107. LIMITATION ON NONMISSION-RELATED ASSETS.

Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended—

(1) by striking the subtitle designation and heading and inserting the following:

''Subtitle B—Required Capital Levels for Enterprises, Special Enforcement Powers, and Limitation on Nonmission-Related Assets'';

and

(2) by adding at the end the following:

''SEC. 1369E. LIMITATION ON NONMISSION-RELATED ASSETS.

''(a) IN GENERAL.—The Director may, by regulation, determine the type and amount of nonmission-related assets that an enterprise may hold at any time. The Director shall, in any such regulation, define the term 'nonmission-related asset' for purposes of this section.

''(b) RULE OF CONSTRUCTION.—Subsection (a) may not be construed to authorize an enterprise to engage in any new program relating to any nonmission-related asset without obtaining the prior approval of the Director in accordance with section 1319H.''.

SEC. 108. REPORTS.

Sections 1327 and 1328 of the Housing and Community Development Act of 1992 (12 U.S.C. 4547, 4548) are amended by striking ''Secretary'' each place it appears and inserting ''Director''.

SEC. 109. RISK-BASED CAPITAL TEST FOR ENTERPRISES.

Section 1361 of the Housing and Community Development Act of 1992 (12 U.S.C. 4611) is amended—

(1) in subsection (a)(2)(A), by inserting '', or change in such other manner as the Director considers appropriate,'' after ''subparagraph (C),'';

(2) in subsection (b)(1), by adding at the end the following: ''Notwithstanding subsection (a), the Director may, in the sole discretion of the Director, make any assumptions that the Director considers appropriate regarding interest rates, home prices, and new business. Such assessment shall ensure that enterprise risk-based capital standards are, to the greatest extent feasible, comparable to those imposed by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) for comparable risk. The risk-based assessment relating to new business under this paragraph shall ensure that the enterprise is able to remain a viable enterprise in full compliance with all applicable risk-based capital and minimum capital standards, and that it can fulfill its role of ensuring appropriate secondary market liquidity throughout the stress test.''; and

(3) in subsection (c)(2), by inserting '', or such other percentage as the Director considers appropriate'' before the period at the end.

SEC. 110. MINIMUM AND CRITICAL CAPITAL LEVELS.

(a) MINIMUM CAPITAL LEVEL.—Section 1362 of the Housing and Community Development Act of 1992 (12 U.S.C. 4612) is amended—

(1) by striking subsection (b);

(2) by striking ''(a) IN GENERAL.—''; and

(3) in the matter preceding paragraph (1), by inserting before ''the sum of'' the following: ''the amount established by the Director, by regulation or order, as such amount may be adjusted from time-to-time by the Director to achieve the purposes of this title, that is not less than''.

(b) CRITICAL CAPITAL LEVEL.—Section 1363 of the Housing and Community Development Act of 1992 (12 U.S.C. 4613) is amended, in the matter preceding paragraph (1), by inserting before ''the sum of'' the following: ''the amount established by the Director, by regulation or order, as such amount may be adjusted from time-to-time by the Director to achieve the purposes of this title, that is not less than''.

SEC. 111. DEFINITIONS.

Section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) is amended—

(1) in paragraph (5), by striking ''Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Federal Enterprise Supervision of the Department of the Treasury'';

(2) in paragraphs (8), (9), (10), and (19), by inserting ''of Housing and Urban Development'' after ''Secretary'' each place such term appears;

(3) in paragraph (14), by striking ''Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Federal Enterprise Supervision of the Department of the Treasury'';

(4) by striking paragraph (15);

(5) by redesignating paragraphs (7) through (14) (as amended by the preceding provisions of this Act) as paragraphs (8) through (15), respectively; and

(6) by inserting after paragraph (6) the following:

''(7) ENTERPRISE-AFFILIATED PARTY.—The term 'enterprise-affiliated party' means—

''(A) any director, officer, employee, or controlling stockholder of, or agent for, an enterprise;

''(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

''(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

''(i) any violation of any law or regulation;

''(ii) any breach of fiduciary duty; or

''(iii) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise.''.

Subtitle B—Prompt Corrective Action

SEC. 131. CAPITAL CLASSIFICATIONS.

Section 1364 of the Housing and Community Development Act of 1992 (12 U.S.C. 4614) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) DISCRETIONARY CLASSIFICATION.—

''(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify an enterprise under paragraph (2) if—

''(A) at any time, the Director determines in writing that an enterprise is engaging in conduct that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;

''(B) after notice and an opportunity for hearing, the Director determines that an enterprise is in an unsafe or unsound condition; or

''(C) pursuant to section 1371(b), the Director deems an enterprise to be engaging in an unsafe or unsound practice.

''(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of an enterprise for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify an enterprise—

''(A) as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;

''(B) as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized; and

''(C) as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized.'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

''(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

''(1) IN GENERAL.—An enterprise shall make no capital distribution if, after making the distribution, the enterprise would be undercapitalized.

''(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit an enterprise to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

''(A) is made in connection with the issuance of additional shares or obligations of the enterprise in at least an equivalent amount; and

''(B) will reduce the financial obligations of the enterprise or otherwise improve the financial condition of the enterprise.''.

SEC. 132. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED ENTERPRISES.

(a) EFFECTIVE DATE FOR SUPERVISORY ACTIONS.—Section 1365(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4615(c)) is amended by striking ''1-year'' and inserting ''6-month''.

(b) SUPERVISORY ACTIONS.—Section 1365 of the Housing and Community Development Act of 1992 (12 U.S.C. 4615) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(B) by inserting before paragraph (2) the following:

''(1) REQUIRED MONITORING.—The Director shall—

''(A) closely monitor the condition of any undercapitalized enterprise;

''(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and

''(C) periodically review the plan, restrictions, and requirements applicable to the undercapitalized enterprise to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.''; and

(C) by inserting at the end the following:

''(4) RESTRICTION OF ASSET GROWTH.—An undercapitalized enterprise shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

''(A) the Board has accepted the enterprise's capital restoration plan;

''(B) any increase in total assets is consistent with the plan; and

''(C) the ratio of tangible equity to assets of the enterprise increases during the calendar quarter at a rate sufficient to enable the enterprise to become adequately capitalized within a reasonable time.

''(5) PRIOR APPROVAL OF ACQUISITIONS AND ISSUANCE OF NEW PRODUCTS.—An undercapitalized enterprise shall not, directly or indirectly, acquire any interest in any entity or issue a new product unless—

''(A) the Director has accepted the capital restoration plan of the enterprise, the enterprise is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

''(B) the Director determines that the proposed action will further the purpose of this section.''; and

(2) in the subsection heading for subsection (b), by striking ''FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED'';

(3) by redesignating subsection (c) (as amended by subsection (a)) as subsection (d); and

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

''(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to an undercapitalized enterprise, any of the actions authorized to be taken under section 1366 with respect to a significantly undercapitalized enterprise, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.''.

SEC. 133. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED ENTERPRISES.

Section 1366 of the Housing and Community Development Act of 1992 (12 U.S.C. 4616) is amended—

(1) in subsection (b)—

(A) in the subsection heading, by striking ''DISCRETIONARY SUPERVISORY ACTIONS'' and inserting ''SPECIFIC ACTIONS'';

(B) in the matter preceding paragraph (1), by striking ''may, at any time, take any'' and inserting ''shall carry out this section by taking, at any time, 1 or more'';

(C) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively;

(D) by inserting after paragraph (4) the following:

''(5) IMPROVEMENT OF MANAGEMENT.—Take one or more of the following actions:

''(A) NEW ELECTION OF BOARD.—Order a new election for the board of directors of the enterprise.

''(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the enterprise to dismiss from office any director or executive officer who had held office for more than 180 days

immediately before the enterprise became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the Director's enforcement powers under section 1377.

''(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the enterprise to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).''; and

(E) by inserting at the end the following:

''(8) OTHER ACTION.—Require the enterprise to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph.'';

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following:

''(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—An enterprise that is classified as significantly undercapitalized may not, without prior written approval by the Director—

''(A) pay any bonus to any executive officer; or

''(B) provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the enterprise became undercapitalized.''.

Subtitle C—Enforcement Actions

SEC. 151. CEASE-AND-DESIST PROCEEDINGS.

Section 1371 of the Housing and Community Development Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.—

''(1) IN GENERAL.—If, in the opinion of the Director, an enterprise or any enterprise-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise or any enterprise-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the enterprise or is violating or has violated, or the Director has reasonable cause to believe that the enterprise or any enterprise-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the enterprise or any written agreement entered into with the Director, the Director may issue and serve upon the enterprise or such party a notice of charges in respect thereof.

''(2) LIMITATIONS.—The Director may not enforce compliance with—

''(A) any housing goal established under subpart B of part 2 of subtitle A of this title;

''(B) section 1336 or 1337 of this title;

''(C) subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)); or

''(D) subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)).

''(b) ISSUANCE FOR UNSATISFACTORY RATING.—If an enterprise receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the enterprise to be engaging in an unsafe or unsound practice for purposes of this subsection.''; and

(2) in subsection (c)(2), by striking ''or director'' and inserting ''director, or enterprise-affiliated party''.

SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.

Section 1372 of the Housing and Community Development Act of 1992 (12 U.S.C. 4632) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GROUNDS FOR ISSUANCE.—Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the enterprise or any enterprise-affiliated party under section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the enterprise, or is likely to weaken the condition of the enterprise prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the enterprise or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection 1371(d).'';

(2) in subsection (b), by striking ''or director'' and inserting ''director, or enterprise-affiliated party'';

(3) in subsection (d), striking ''or director'' and inserting ''director, or enterprise-affiliated party''; and

(4) by striking subsection (e) and in inserting the following:

''(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued under this section, the Director may apply to the United States District Court for the District of Columbia or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.''.

SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Subtitle C of title XIII of the Housing and Community Development Act of 1992 is amended—

(1) by redesignating sections 1377 through 1379B (12 U.S.C. 4637–41) as sections 1379 through 1379D, respectively; and

(2) by inserting after section 1376 (12 U.S.C. 4636) the following:

''SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

''(a) AUTHORITY TO ISSUE ORDER.—Whenever the Director determines that—

''(1) any enterprise-affiliated party has, directly or indirectly—

''(A) violated—

''(i) any law or regulation;

''(ii) any cease-and-desist order which has become final;

''(iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise; or

''(iv) any written agreement between such enterprise and the Director;

''(B) engaged or participated in any unsafe or unsound practice in connection with any enterprise; or

''(C) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

''(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—

''(A) such enterprise has suffered or will probably suffer financial loss or other damage; or

''(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

''(3) such violation, practice, or breach—

''(A) involves personal dishonesty on the part of such party; or

''(B) demonstrates willful or continuing disregard by such party for the safety or soundness of such enterprise,

the Director may serve upon such party a written notice of the Director's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any enterprise.

''(b) SUSPENSION ORDER.—

''(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) to any enterprise-affiliated party of the Director's intention to issue an order under, the Director may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the enterprise, if the Director—

''(A) determines that such action is necessary for the protection of the enterprise; and

''(B) serves such party with written notice of the suspension order.

''(2) EFFECTIVE PERIOD.—Any suspension order issued under subsection (a)—

''(A) shall become effective upon service; and

''(B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—

''(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

''(ii) the effective date of an order issued by the Director to such party under subsection (a).

''(3) COPY OF ORDER.—If the Director issues a suspension order under subsection (a) to any enterprise-affiliated party, the Director shall serve a copy of such order on any enterprise with which such party is affiliated at the time such order is issued.

''(c) NOTICE, HEARING, AND ORDER.—A notice of intention to remove an enterprise-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an enterprise shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the enterprise, as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such enterprise and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

''(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

''(1) participate in any manner in the conduct of the affairs of any enterprise;

''(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any enterprise;

''(3) violate any voting agreement previously approved by the Director; or

''(4) vote for a director, or serve or act as an enterprise-affiliated party.

''(e) INDUSTRY-WIDE PROHIBITION.—

''(1) IN GENERAL.—Except as provided in subparagraph (2), any person who, pursuant to an order issued under subsection (h), has been removed or suspended from office in an enterprise or prohibited from participating in the conduct of the affairs of an enterprise may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of any enterprise.

''(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any enterprise-affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the enterprise described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

''(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

''(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

''(g) STAY OF SUSPENSION AND PROHIBITION OF ENTERPRISE-AFFILIATED PARTY.—Within 10 days after any enterprise-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of an enterprise under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the enterprise is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension or prohibition.

''(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AFFILIATED PARTY CHARGED WITH FELONY.—

''(1) SUSPENSION OR PROHIBITION.—

''(A) IN GENERAL.—Whenever any enterprise-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the enterprise or impair public confidence in the enterprise, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any enterprise.

''(B) PROVISIONS APPLICABLE TO NOTICE.—

''(i) COPY.—A copy of any notice under paragraph (1)(A) shall also be served upon the enterprise.

''(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

''(2) REMOVAL OR PROHIBITION.—

''(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an enterprise-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the enterprise or impair public confidence in the enterprise, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise without the prior written consent of the Director.

''(B) PROVISIONS APPLICABLE TO ORDER.—

''(i) COPY.—A copy of any order under paragraph (2)(A) shall also be served upon the enterprise, whereupon the enterprise-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such enterprise.

''(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in enterprise affairs under subsection (a), (d), or (e).

''(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

''(3) AUTHORITY OF REMAINING BOARD MEMBERS.—

''(A) IN GENERAL.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

''(B) SUSPENSION OF ALL DIRECTORS.—In the event all of the directors of an enterprise are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the enterprise and their respective successors take office.

''(4) HEARING REGARDING CONTINUED PARTICIPATION.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the enterprise-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the enterprise by such party does not, or is not likely to, pose a threat to the interests of the enterprise or threaten to impair public confidence in the enterprise. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the enterprise will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

''(i) HEARINGS AND JUDICIAL REVIEW.—

''(1) VENUE AND PROCEDURE.—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the enterprise is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to the court for final decision, the court shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

''(2) REVIEW OF ORDER.—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the enterprise or the enterprise-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the enterprise is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

''(3) PROCEEDINGS NOT TREATED AS STAY.—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.''.

(b) CONFORMING AMENDMENTS.—

(1) 1992 ACT.—Section 1317(f) of the Housing and Community Development Act of 1992 (12

U.S.C. 4517(f)) is amended by striking ''section 1379B'' and inserting ''section 1379D''.

(2) FANNIE MAE CHARTER ACT.—The second sentence of subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by striking ''The'' and inserting ''Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the''.

(3) FREDDIE MAC ACT.—The second sentence of subparagraph (A) of section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by striking ''The'' and inserting ''Except to the extent action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the''.

SEC. 154. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Housing and Community Development Act of 1992 (12 U.S.C. 4635) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.''; and

(2) in subsection (b), by striking ''or 1376'' and inserting ''1376, or 1377''.

SEC. 155. CIVIL MONEY PENALTIES.

Section 1376 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking ''or any executive officer or'' and inserting ''any executive officer of an enterprise, any enterprise-affiliated party, or any'';

(2) by striking subsection (b) and inserting the following:

''(b) AMOUNT OF PENALTY.—

''(1) FIRST TIER.—Any enterprise which, or any enterprise-affiliated party who—

''(A) violates any provision of this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or any order, condition, rule, or regulation under any such title or Act, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), or with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f));

''(B) violates any final or temporary order or notice issued pursuant to this title;

''(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise;

''(D) violates any written agreement between the enterprise and the Director; or

''(E) engages in any conduct the Director determines to be an unsafe or unsound practice,

shall forfeit and pay a civil penalty of not more than $10,000 for each day during which such violation continues.

''(2) SECOND TIER.—Notwithstanding paragraph (1)—

''(A) if an enterprise, or an enterprise-affiliated party—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such enterprise; or

''(iii) breaches any fiduciary duty; and

''(B) the violation, practice, or breach—

''(i) is part of a pattern of misconduct;

''(ii) causes or is likely to cause more than a minimal loss to such enterprise; or

''(iii) results in pecuniary gain or other benefit to such party,

the enterprise or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which such violation, practice, or breach continues.

''(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any enterprise which, or any enterprise-affiliated party who—

''(A) knowingly—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) engages in any unsafe or unsound practice in conducting the affairs of such enterprise; or

''(iii) breaches any fiduciary duty; and

''(B) knowingly or recklessly causes a substantial loss to such enterprise or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

''(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

''(A) in the case of any person other than an enterprise, an amount not to exceed $2,000,000; and

''(B) in the case of any enterprise, $2,000,000.''; and

(3) in subsection (d)—

(A) by striking ''or director'' each place such term appears and inserting ''director, or enterprise-affiliated party'';

(B) by striking ''request the Attorney General of the United States to'';

(C) by inserting '', or the United States district court within the jurisdiction of which the headquarters of the enterprise is located,'' after ''District of Columbia''; and

(D) by striking '', or may, under the direction and control of the Attorney General, bring such an action''.

SEC. 156. CRIMINAL PENALTY.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377 (as added by this Act) the following:

''SEC. 1378. CRIMINAL PENALTY.

''Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any enterprise shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.''.

Subtitle D—Reports to Congress

SEC. 161. STUDIES AND REPORTS.

(a) INSURED DEPOSITORY INSTITUTION HOLDINGS OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURITIES.—Not later than 180 days after the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board shall jointly submit a report to Congress regarding—

(1) the extent to which obligations issued or guaranteed by the enterprises (including mortgage-backed securities) are held by federally insured depository institutions, including such extent by type of institution and such extent relative to the capital of the institution;

(2) the extent to which the unlimited holdings by federally insured depository institutions of the obligations of the enterprises could produce systemic risk issues, particularly for the safety and soundness of the banking system in the United States, in the event of default or failure by an enterprise; and

(3) the effects on the enterprises, the banking industry, and mortgage markets, if prudent limits on the holdings of enterprise obligations were placed on federally insured depository institutions.

(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT, AND MISSION.—

(1) IN GENERAL.—Not later than one year after the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the Director shall submit a report to Congress—

(A) describing the holdings of the enterprises in retained mortgages and repurchased mortgage-backed securities and the use of derivatives for hedging purposes;

(B) describing the extent of such holdings relative to other assets and the risk implications of such holdings;

(C) containing an analysis of such holdings for safety and soundness or mission compliance purposes; and

(D) containing an assessment of whether such holdings and other assets of the enterprises fulfill the mission purposes of the enterprises under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) and the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) CONSULTATION.—The Director shall consult with the Comptroller General of the United States in preparing the report under this subsection and in conducting any research, analyses, and assessments for the report.

(c) STUDY OF MERGER OF FHFB WITH OFES.—

(1) IN GENERAL.—The Secretary of the Treasury, after consultation with the Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve System, shall study the feasibility and advisability of merging the Federal Housing Finance Board and the Office of Federal Enterprise Supervision of the Department of the Treasury.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(d) STUDY OF CONSOLIDATION OF OTS WITH OFES.—

(1) STUDY.—The Secretary of the Treasury shall study the feasibility and efficacy of consolidating the Office of Thrift Supervision with the Office of Federal Enterprise Supervision of the Department of the Treasury.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(e) RECOMMENDATIONS.—Each report submitted pursuant to this section shall include specific recommendations of appropriate

policies, limitations, regulations, legislation, or other actions to deal appropriately and effectively with the issues addressed by such report.

(f) DEFINITIONS.—As used in this section, the terms ''Director'' and ''enterprise'' have the meanings given those terms under section 1303 of the Housing and Community Development Act of 1992 (42 U.S.C. 4502).

(g) CLERICAL AMENDMENTS.—Part 3 of subtitle A of title XIII the Housing and Community Development Act of 1992 (106 Stat. 3969) is amended—

(1) by striking sections 1351, 1352, and 1353 (Public Law 102–550; 106 Stat. 3969), except that the provisions of law amended by such sections repealed shall not be affected by such repeal; and

(2) by striking sections 1354, 1355, and 1356 (12 U.S.C. 4601–3).

Subtitle E—General Provisions

SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO 1992 ACT.—Title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.), as amended this Act, is further amended—

(1) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) in the subsection heading, by striking ''OFFICE PERSONNEL'' and inserting ''IN GENERAL''; and

(ii) by striking ''The'' and inserting ''Subject to title II of the Federal Enterprise Regulatory Reform Act of 2003, the'';

(B) in subsection (d)—

(i) in the subsection heading, by striking ''HUD'' and inserting ''DEPARTMENT OF THE TREASURY''; and

(ii) by striking ''Housing and Urban Development'' and inserting ''the Department of the Treasury''; and

(C) by striking subsection (f);

(2) in section 1319A (12 U.S.C. 4520)—

(A) by striking ''(a) IN GENERAL.—''; and

(B) by striking subsection (b);

(3) in section 1319F (12 U.S.C. 4525), by striking paragraph (2);

(4) in the section heading for section 1328, by striking ''**SECRETARY**'' and inserting ''**DIRECTOR**'';

(5) in section 1361 (12 U.S.C. 4611)—

(A) in subsection (e)(1), by striking the first sentence and inserting the following: ''The Director shall establish the risk-based capital test under this section by regulation.''; and

(B) in subsection (f), by striking ''the Secretary,'';

(6) in section 1364(c) (12 U.S.C. 4614(c)), by striking the last sentence;

(7) in section 1367(a)(2) (12 U.S.C. 4617(a)(2)), by striking ''with the written concurrence of the Secretary of the Treasury,'';

(8) by striking section 1383;

(9) by striking ''Committee on Banking, Finance and Urban Affairs'' and inserting ''Committee on Financial Services'' each place such term appears in sections 1319B, 1319G(c), 1328(a), 1336(b)(3)(C), 1337, and 1369(a)(3); and

(10) by striking ''Secretary'' and inserting ''Director'' each place such term appears in—

(A) subpart A of part 2 of subtitle A (except in sections 1322, 1324, and 1325); and

(B) subtitle B (except in section 1361(d)(1) and 1369E); and

(b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—The Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) is amended—

(1) by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place such term appears, and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury'', in—

(A) section 303(c)(2) (12 U.S.C. 1718(c)(2));

(B) section 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)); and

(C) section 309(k)(1); and

(2) in section 309(n)—

(A) in paragraph (1), by inserting ''the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury,'' after ''Senate,''; and

(B) in paragraph (3)(B), by striking ''Secretary'' and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury''.

(c) AMENDMENTS TO FREDDIE MAC ACT.—The Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.) is amended—

(1) by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place such term appears, and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury'', in—

(A) section 303(b)(2) (12 U.S.C. 1452(b)(2));

(B) section 303(h)(2) (12 U.S.C. 1452(h)(2)); and

(C) section 307(c)(1) (12 U.S.C. 1456(c)(1));

(2) in section 306(i) (12 U.S.C. 1455(i))—

(A) by striking ''section 1316(c)'' and inserting ''section 306(c)''; and

(B) by striking ''section 106'' and inserting ''section 1316''; and

(3) in section 307 (12 U.S.C. 1456)—

(A) in subsection (f)—

(i) in paragraph (1), by inserting ''the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury,'' after ''Senate,''; and

(ii) in paragraph (3)(B), by striking ''Secretary'' and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury''.

(d) AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking ''Office of Federal Housing Enterprise Oversight'' and inserting ''Office of Federal Enterprise Supervision of the Department of the Treasury''.

(e) AMENDMENTS TO FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Director of the Office of Federal Enterprise Supervision of the Department of the Treasury''.

(f) AMENDMENT TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(g) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:

''Director of the Office of Federal Enterprise Oversight, Department of the Treasury.''.

SEC. 172. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 1-year period beginning on the date of enactment of this Act.

TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

SEC. 201. ABOLISHMENT OF OFHEO.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight shall, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

(1) manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of any transfer of such employee pursuant to section 203; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES AS FEDERAL AGENCY EMPLOYEES.—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as employees of an agency of the United States for purposes of any other provision of law during any time such employee is so employed.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director of the Office of Federal Enterprise Supervision of the Department of the Treasury may use the property of the Office of Federal Housing Enterprise Oversight to perform functions that have been transferred to the Director of the Office of Federal Enterprise Supervision for such time as is reasonable to facilitate the orderly transfer of functions under any other provision of this Act, or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under or pursuant to the title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.), the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or any other provision of law applicable with respect to such Office; and

(B) existed on the day before the abolishment under subsection (a) of this section.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight shall abate by reason of the enactment of this Act, except that the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 202. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

All regulations, orders, determinations, and resolutions that—

(1) were issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight;

(B) the Secretary of Housing and Urban Development and that relate to the Secretary's authority under—

(i) title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.);

(ii) under the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), with respect to the Federal National Mortgage Association; or

(iii) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.); or

(C) a court of competent jurisdiction and that relate to functions transferred by this Act; and

(2) are in effect on the date of the abolishment under section 201(a) of this Act,

shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury until modified, terminated, set aside, or superseded in accordance with applicable law by such Board, any court of competent jurisdiction, or operation of law.

SEC. 203. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

(a) AUTHORITY TO TRANSFER.—The Director of the Office of Federal Enterprise Supervision of the Department of the Treasury may transfer employees of the Office of Federal Housing Enterprise Oversight to the Office of Federal Enterprise Supervision for employment no later than the date of the abolishment under section 201(a) of this Act, as the Director considers appropriate. This Act and the amendments made by this Act shall not be considered to result in the transfer of any function from one agency to another or the replacement of one agency by another, for purposes of section 3505 of title 5, United States Code, except to the extent that the Director of the Office of Federal Enterprise Supervision specifically provides so.

(b) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred.

(2) DECLINE OF TRANSFER.—The Director of the Office of Federal Enterprise Supervision of the Department of the Treasury may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(c) REORGANIZATION.—If the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury determines, after the end of the 1-year period beginning on the date of the abolishment under section 201(a), that a reorganization of the combined work force is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(d) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury as a result of a transfer under subsection (a) may retain for 18 months after the date such transfer occurs membership in any employee benefit program of the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury or the Office of Federal Housing Enterprise Oversight, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 201(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Office of Federal Enterprise Supervision.

(2) PAYMENT OF DIFFERENTIAL.—The difference in the costs between the benefits which would have been provided by such agency and those provided by this section shall be paid by the Director of the Office of Federal Enterprise Supervision. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

SEC. 204. TRANSFER OF PROPERTY AND FACILITIES.

Upon the abolishment under section 201(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury.

By Mr. COLEMAN:

S 1509. A bill to amend title 38, United States Code, to provide a gratuity to veterans, their spouses, and children who contract HIV or AIDS as a result of a blood transfusion relating to a service-connected disability, and for other purposes; to the Committee on Veterans' Affairs.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill I introduce today, the Eric and Brian Simon Act of 2003, to provide compensation to veterans, their spouses, and children who contract HIV or AIDS as a result of a blood transfusion relating to a service-connected injury, be printed in the RECORD.

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

S. 1509

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 ''Eric and Brian Simon Act of 2003''.

SEC. 2. GRATUITY FOR VETERANS AND DEPENDENTS WHO CONTRACT HIV OR AIDS FROM BLOOD TRANSFUSIONS RELATING TO SERVICE-CONNECTED DISABILITIES.

(a) IN GENERAL.—Subchapter IV of chapter 11 of title 38, United States Code, is amended by inserting after section 1137 the following new section:

''§ 1138. Gratuity for veterans and dependents who contract HIV or AIDS from blood transfusions relating to service-connected disabilities

''(a) IN GENERAL.—Except as provided in subsection (c), the Secretary shall pay a gratuity in the amount of $100,000 to each individual described in subsection (b) who has an HIV infection or is diagnosed with AIDS.

''(b) ELIGIBLE INDIVIDUALS.—An individual described in this subsection is any individual as follows:

''(1) A veteran who—

''(A) was treated with HIV contaminated blood transfusion, HIV contaminated blood components, HIV contaminated human tissue, or HIV contaminated organs (other than Anti-hemophiliac Factor) as a result of a service-connected disability; and

''(B) can assert through medical evidence acceptable to the Secretary reasonable certainty of transmission of HIV as a result of such treatment.

''(2) A lawful spouse, or former lawful spouse, of a veteran described in paragraph (1) after the time of treatment of such veteran as described in that paragraph who can assert through medical evidence acceptable to the Secretary reasonable certainty of transmission of HIV from such veteran.

''(3) Each natural child of a veteran described in paragraph (1) conceived after the time of treatment of such veteran as described in that paragraph who can assert through medical evidence acceptable to the Secretary reasonable certainty of perinatal transmission of HIV from such veteran.

''(c) EXCEPTION.—An individual described in subsection (b) is not entitled to the payment of a gratuity under subsection (a) if the individual has received a payment under section 102 of the Ricky Ray Hemophilia Relief Fund Act of 1998 (42 U.S.C. 300c–22 note) with respect to an HIV or AIDS infection.

''(d) ACCEPTABLE MEDICAL EVIDENCE.—(1) Except as provided in paragraph (2), medical evidence acceptable to the Secretary under subsection (b) shall include the following, as applicable:

''(A) Evidence of infection with HIV or AIDS.

''(B) In the case of a veteran described in subsection (b)(1), evidence of the treatment described in subsection (b)(1).

''(C) Evidence indicating no prior infection with HIV or AIDS before the treatment described in subsection (b)(1) that provided the source of infection with HIV or AIDS.

''(D) Evidence indicating that infection with HIV or AIDS occurred after the date of the treatment described in subsection (b)(1) that provided the source of infection with HIV or AIDS.

''(E) In the case of an individual described in paragraph (2) or (3) of subsection (b), evidence of transmission of HIV from a veteran described in paragraph (1) of that subsection.

''(F) Such other evidence as the Secretary may require.

''(2) The Secretary may waive an applicable requirement for any evidence specified in paragraph (1) if the Secretary determines that such evidence was destroyed or is otherwise unavailable as a result of circumstances beyond the control of the individual concerned.

''(e) PAYMENT FOR DECEASED INDIVIDUALS.—(1) If an individual entitled to a gratuity under this section is deceased at the time of payment, payment shall be made as follows:

''(A) In the case of an individual who is survived by a spouse living at the time of payment, to the surviving spouse.

''(B) In the case of an individual whose surviving spouse is not living at the time of payment, to the children of the individual living at the time of payment in equal shares.

''(C) In the case of an individual not described by paragraph (1) or (2), to the parents of the individual living at the time of payment in equal shares.

''(2) An individual described in paragraph (2) or (3) of subsection (b) who is entitled to a gratuity under subsection (a) is also entitled to payment under paragraph (1) with respect to a deceased individual.

''(3) In this subsection:

''(A) The term 'spouse', with respect to an individual described in paragraph (1), means the individual who was lawfully married to such individual at the time of death.

''(B) The term 'child' includes a recognized natural child, a stepchild who lived with such individual in a parent-child relationship, and an adopted child.

''(C) The term 'parent' includes fathers and moths through adoption.

''(f) APPLICATION.—(1) A person seeking payment of a gratuity under subsection (a) shall submit to the Secretary an application therefor in such form and containing such information as the Secretary shall require.

''(2) If an individual described in subsection (b) dies before submitting an application for a gratuity under subsection (a), an individual who would be entitled to payment under subsection (e) with respect to such deceased individual may submit an application for the gratuity under paragraph (1).

''(g) TREATMENT OF GRATUITY FOR INSURANCE PURPOSES.—(1) A payment under this section shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on the individual receiving the payment, or on the basis of such receipt, to repay any insurance carrier for insurance payments or to repay any person on account of worker's compensation payments.

''(2) A payment under this section shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

''(h) DEFINITIONS.—In this section:

''(1) The term 'AIDS' means acquired immune deficiency syndrome.

''(2) The term 'HIV' means human immunodeficiency virus.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of that title is amended by inserting after the item relating to section 1137 the following new item:

''1138. Gratuity for veterans and dependents who contract HIV or AIDS from blood transfusions relating to service-connected disabilities.''.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, and Mr. DAYTON):

S. 1510. A bill to amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for resident in the United States, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Today I am introducing the Permanent Partners Immigration Act, a Senate companion to legislation that Representative NADLER of New York has introduced in the House for each of the last three Congresses. This legislation would allow U.S. citizens and legal permanent residents to petition for their foreign same-sex partners to come to the United States under our family immigration system. I am pleased to be joined in introducing this bill by Senators JEFFORDS, FEINGOLD, KENNEDY, and KERRY.

Under current law, committed partners of Americans are unable to use the family immigration system, which accounts for about 75 percent of the green cards and immigrant visas granted annually by the United States. As a result, gay Americans who are in this situation must live apart from their partners, or leave the country if they want to live legally and permanently with them.

This bill rectifies that situation, while retaining strong prohibitions against fraud. To qualify as a permanent partner, petitioners must prove that they are at least 18 and in a committed, intimate relationship with another adult in which both parties intend a lifelong commitment, and are financially interdependent with one's partner. They must also prove that they are not married to, or in a permanent partnership with, anyone other than that person, and are unable to contract with that person a marriage cognizable under the Immigration and Nationality Act. Proof could include sworn affidavits from friends and family and documentation of financial interdependence. Penalties for fraud would be the same as penalties for marriage fraud—up to five years in prison and $250,000 in fines for the U.S. citizen partner, and deportation for the alien partner.

There are Vermonters who are involved in permanent partnerships with foreign nationals and who have felt abandoned by our laws in this area. This bill would allow them—and other gay and lesbian Americans throughout our Nation who have come to feel that our immigration laws are discriminatory—to be a fuller part of our society.

The idea that immigration benefits should be extended to same-sex couples has become increasingly prevalent around the world. Indeed, fifteen nations Australia, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Sweden and the United Kingdom—recognize same-sex couples for immigration purposes.

Our immigration laws treat gays and lesbians in committed relationships as second-class citizens, and that needs to change. It is the right thing to do for the people involved, it is the sensible step to take in the interest of having a fair and consistent policy, and I hope that the Senate will act.

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

S. 1510

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

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.

(a) SHORT TITLE.—This Act may be cited as the ''Permanent Partners Immigration Act of 2003''.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

SEC. 2. DEFINITIONS.

Section 101(a) (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(K)(ii), by inserting ''or permanent partnership'' after ''marriage''; and

(2) by adding at the end the following:

''(51) The term 'permanent partner' means an individual 18 years of age or older who—

''(A) is in a committed, intimate relationship with another individual 18 years of age or older in which both parties intend a lifelong commitment;

''(B) is financially interdependent with that other individual;

''(C) is not married to or in a permanent partnership with anyone other than that other individual;

''(D) is unable to contract with that other individual a marriage cognizable under this Act; and

''(E) is not a first, second, or third degree blood relation of that other individual.

''(52) The term 'permanent partnership' means the relationship that exists between two permanent partners.''.

SEC. 3. WORLDWIDE LEVEL OF IMMIGRATION.

Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

(1) by inserting ''permanent partners,'' after ''spouses,'';

(2) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(3) by striking ''remarries.'' and inserting ''remarries or enters a permanent partnership with another person.''.

SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) PER COUNTRY LEVELS.—Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended—

(1) in the heading, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES'';

(2) in subparagraph (A), in the heading by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES''; and

(3) in subparagraph (C), in the heading by inserting ''WITHOUT PERMANENT PARTNERS'' after ''DAUGHTERS''.

(b) RULES FOR CHARGEABILITY.—Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended—

(1) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(2) by inserting ''or permanent partners'' after ''husband and wife''.

SEC. 5. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS.—Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended—

(1) in the heading—

(A) by striking ''and'' after ''SPOUSES'' and inserting '', PERMANENT PARTNERS,''; and

(B) by inserting ''WITHOUT PERMANENT PARTNERS'' after ''SONS'' and after ''DAUGHTERS''; and

(2) in subparagraph (A)—

(A) by inserting '', permanent partners,'' after ''spouses''; and

(B) by inserting ''without permanent partners'' after ''sons'' and after ''daughters''.

(b) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS.—Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended—

(1) in the heading, by inserting ''AND DAUGHTERS AND SONS WITH PERMANENT PARTNERS'' after ''DAUGHTERS''; and

(2) by inserting ''or daughters or sons with permanent partners'' after ''daughters''.

(c) EMPLOYMENT CREATION.—Section 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is

amended by inserting ''permanent partner,'' after ''spouse,''.

(d) TREATMENT OF FAMILY MEMBERS.—Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION PETITIONS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—

(1) in subparagraph (A)(ii), by inserting ''or permanent partner'' after ''spouse'';

(2) in subparagraph (A)(iii)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) in subclause (I), by inserting ''or permanent partnership'' after ''marriage'' each place such term appears; and

(3) in subparagraph (B)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

(b) IMMIGRATION FRAUD PREVENTION.—Section 204(c) (8 U.S.C. 1154(c)) is amended—

(1) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(2) by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

SEC. 7. ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.

Section 207(c) (8 U.S.C. 1157(c)) is amended—

(1) in paragraph (2)—

(A) by inserting '', permanent partner,'' after ''spouse'' each place such term appears; and

(B) by inserting '', permanent partner's,'' after ''spouse's''; and

(2) in paragraph (4), by inserting '', permanent partner,'' after ''spouse''.

SEC. 8. ASYLUM.

Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended—

(1) in the heading, by inserting ''OR PERMANENT PARTNER'' after ''SPOUSE''; and

(2) in subparagraph (A), by inserting '', permanent partner,'' after ''spouse''.

SEC. 9. ADJUSTMENT OF STATUS OF REFUGEES.

Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting '', permanent partner,'' after ''spouse''.

SEC. 10. INADMISSIBLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Section 212(a) (8 U.S.C. 1182(a)) is amended—

(1) in paragraph (3)(D)(iv), by inserting ''permanent partner,'' after ''spouse,'' each place such term appears;

(2) in paragraph (4)(C)(i)(I), by inserting '', permanent partner,'' after ''spouse'';

(3) in paragraph (6)(E)(ii), by inserting ''permanent partner,'' after ''spouse,'' each place such term appears; and

(4) in paragraph (9)(B)(v), by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

(b) WAIVERS.—Section 212(d) (8 U.S.C. 1182(d)) is amended—

(1) in paragraph (11), by inserting ''permanent partner,'' after ''spouse,''; and

(2) in paragraph (12), by inserting '', permanent partner,'' after ''spouse''.

(c) WAIVERS OF INADMISSIBILITY ON HEALTH-RELATED GROUNDS.—Section 212(g)(1)(A) (8 U.S.C. 1182(g)(1)(A)) is amended by inserting '', permanent partner,'' after ''spouse''.

(d) WAIVERS OF INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS.—Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting ''permanent partner,'' after ''spouse,'' each place such term appears.

(e) WAIVER OF INADMISSIBILITY FOR MISREPRESENTATION.—Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended—

(1) by inserting ''permanent partner,'' after ''spouse,''; and

(2) by inserting '', permanent partner,'' after ''resident spouse''.

SEC. 11. NONIMMIGRANT STATUS FOR PERMANENT PARTNERS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA.

Section 214 (8 U.S.C. 1184) is amended—

(1) by redesignating subsections (o) and (p) as added by sections 1102(b) and 1103(b), respectively, of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, as enacted into law by section 1(a)(2) of P.L. 106–553, as subsections (p) and (q), respectively; and

(2) in subsection (q) (as so redesignated)—

(A) in paragraph (1), by inserting ''or permanent partner'' after ''spouse''; and

(B) in paragraph (2), by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

SEC. 12. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.

(a) SECTION HEADING.—

(1) IN GENERAL.—The section heading for section 216 (8 U.S.C. 1186a) is amended by inserting ''AND PERMANENT PARTNERS'' after ''SPOUSES''.

(2) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216 to read as follows:

''Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.''.

(b) IN GENERAL.—Section 216(a) (8 U.S.C. 1186a(a)) is amended—

(1) in paragraph (1), by inserting ''or permanent partner'' after ''spouse'';

(2) in paragraph (2)(A), by inserting ''or permanent partner'' after ''spouse'';

(3) in paragraph (2)(B), by inserting ''permanent partner,'' after ''spouse,''; and

(4) in paragraph (2)(C), by inserting ''permanent partner,'' after ''spouse,''.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.—Section 216(b) (8 U.S.C. 1186a(b)) is amended—

(1) in the heading, by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(2) in paragraph (1)(A), by inserting ''or permanent partnership'' after ''marriage''; and

(3) in paragraph (1)(A)(ii)—

(A) by inserting ''or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(B) by inserting ''or permanent partner'' after ''spouse''.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216(c) (8 U.S.C. 1186a(c)) is amended—

(1) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(2) in paragraph (3)(A), in the matter following clause (ii), and in paragraphs (3)(D), (4)(B), and (4)(C), by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

(e) CONTENTS OF PETITION.—Section 216(d)(1) (8 U.S.C. 1186a(d)(1)) is amended—

(1) in subparagraph (A)—

(A) in the heading, by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(B) in clause (i)—

(i) in the matter preceding subclause (I), by inserting ''or permanent partnership'' after ''marriage'';

(ii) in subclause (I), by inserting before the comma at the end '', or is a permanent partnership recognized under this Act''; and

(iii) in subclause (II)—

(I) by inserting ''or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(II) by inserting ''or permanent partner'' after ''spouse''; and

(C) in clause (ii), by inserting ''or permanent partner'' after ''spouse''; and

(2) in subparagraph (B)(i)—

(A) by inserting ''or permanent partnership'' after ''marriage''; and

(B) by inserting ''or permanent partner'' after ''spouse''.

(e) DEFINITIONS.—Section 216(g) (8 U.S.C. 1186a(g)) is amended—

(1) in paragraph (1)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) by inserting ''or permanent partnership'' after ''marriage'' each place such term appears;

(2) in paragraph (2), by inserting ''or permanent partnership'' after ''marriage'';

(3) in paragraph (3), by inserting ''or permanent partnership'' after ''marriage''; and

(4) in paragraph (4)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(B) by inserting ''or permanent partnership'' after ''marriage''.

SEC. 13. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.

(a) SECTION HEADING.—

(1) IN GENERAL.—Section 216A (8 U.S.C. 1186b) is amended in the heading by inserting ''OR PERMANENT PARTNERS'' after ''SPOUSES''.

(2) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216A to read as follows:

''Sec. 216. Conditional permanent resident status for certain alien entrepreneurs, spouses or permanent partners, and children.''.

(b) IN GENERAL.—Section 216A(a) (8 U.S.C. 1186b(a)) is amended, in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting ''or permanent partner'' after ''spouse'' each place such term appears.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended in the matter following subparagraph (C), by inserting ''or permanent partner'' after ''spouse''.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting ''or permanent partner'' after ''spouse''.

(e) DEFINITIONS.—Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting ''or permanent partner'' after ''spouse'' each place such term appears.

SEC. 14. DEPORTABLE ALIENS.

(a) IN GENERAL.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D)(i), by inserting ''or permanent partners'' after ''spouses'' each place such term appears;

(B) in subparagraph (E)—

(i) in clause (ii), by inserting ''or permanent partner'' after ''spouse''; and

(ii) in clause (iii), by inserting ''or permanent partner'' after ''spouse'';

(C) in subparagraph (H)(i)(I), by inserting ''or permanent partner'' after ''spouse''; and

(D) by adding at the end the following:

''(I) PERMANENT PARTNERSHIP FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

''(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Secretary of Homeland Security that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

''(ii) it appears to the satisfaction of the Secretary of Homeland Security that the alien has failed or refused to fulfill the alien's permanent partnership which in the opinion of the Secretary of Homeland Security was made for the purpose of procuring the alien's admission as an immigrant.'';

(2) in paragraph (2)(E)(i), by inserting ''or permanent partner'' after ''spouse'' each place such term appears; and

(3) in paragraph (3)(C)(ii), by inserting ''or permanent partner'' after ''spouse'' each place such term appears.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

SEC. 15. REMOVAL PROCEEDINGS.

Section 240(e)(1) (8 U.S.C. 1229a(e)(1)) is amended by inserting ''permanent partner,'' after ''spouse,''.

SEC. 16. CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.

Section 240A(b) (8 U.S.C. 1229b(b)) is amended—

(1) in paragraph (1)(D), by inserting ''permanent partner,'' after ''spouse,''; and

(2) in paragraph (2)—

(A) in the heading, by inserting '', PERMANENT PARTNER,'' after ''SPOUSE''; and

(B) in subparagraph (A), by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

SEC. 17. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.

(a) PROHIBITION ON ADJUSTMENT OF STATUS.—Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting ''or permanent partnership'' after ''marriage''.

(b) AVOIDING IMMIGRATION FRAUD.—Section 245(e) (8 U.S.C. 1255(e)) is amended—

(1) in paragraph (1), by inserting ''or permanent partnership'' after ''marriage''; and

(2) by adding at the end the following:

''(4) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to the satisfaction of the Secretary of Homeland Security that the permanent partnership was entered into in good faith and in accordance with section 101(a)(51) and the permanent partnership was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.''.

(c) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE.—Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting '', permanent partner,'' after ''spouse''.

(d) INFORMANTS.—Section 245(j) (8 U.S.C. 1255(j)) is amended by inserting ''permanent partner,'' after ''spouse,'' each place such term appears.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—Section 245 (8 U.S.C. 1255) is amended by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''.

SEC. 18. MISREPRESENTATION AND CONCEALMENT OF FACTS.

Section 275(c) (8 U.S.C. 1325(c)) is amended by inserting ''or permanent partnership'' after ''marriage''.

SEC. 19. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.

Section 316(b) (8 U.S.C. 1427(b)) is amended, in the matter following paragraph (2), by inserting ''or permanent partner'' after ''spouse''.

SEC. 20. FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP.

Section 324(a) (8 U.S.C. 1435(a)) is amended, in the matter following ''after September 22, 1922,'', by inserting ''or permanent partnership'' after ''marriage'' each place such term appears.

SEC. 21. APPLICATION OF FAMILY UNITY PROVISIONS TO PERMANENT PARTNERS OF CERTAIN LIFE ACT BENEFICIARIES.

Section 1504 of division B of the Miscellaneous Appropriations Act, 2001, as enacted into law by section 1(a)(4) of Public Law 106–554, is amended—

(1) in the section heading, by inserting '', **PERMANENT PARTNERS,**'' after ''**SPOUSES**'';

(2) in subsection (a), by inserting '', permanent partner,'' after ''spouse''; and

(3) in each of subsections (b) and (c)—

(A) in the subsection headings, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES''; and

(B) by inserting '', permanent partner,'' after ''spouse'' each place such term appears.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator LEAHY in the introduction of the Permanent Partners Immigration Act, to address the injustice in our immigration law on gay and lesbian couples.

The reunification of families is one of the cornerstones of our immigration policy. The American Dream is about opportunity and it is about family life as well. When one member of a family comes to the United States alone, we try to make it possible for their spouse, children, and siblings to join them in the future.

Every year, our immigration policy reunites literally hundreds of thousands of families. In 2002, almost 400,000 immigrants came to the United States to join spouses who are citizens or legal permanent residents. Thousands more siblings and children joined mothers, fathers, brothers and sisters.

Shamefully, though, our current law left thousands of other families permanently divided. Because of their sexual orientation, lesbian and gay couples are kept apart, or forced to stay together illegally, with one partner in constant fear of deportation. They are denied the half of the American Dream that we offer to other citizens and immigrants.

Our bill will remedy this injustice. It gives the same-sex permanent partners of citizens and permanent residents the opportunity to join their loved ones in our country. They must meet strict standards of eligibility, like those applied to spouses. To gain entrance, they must prove that they are financially interdependent with their partners in the United States and that they are in a lifelong relationship.

Most of our major allies and trading partners already grant immigration benefits to same-sex couples. Now, by bringing family reunification to all of our citizens and residents, our bill recognizes the common humanity of gay and lesbian Americans. It is time for Congress to act on this issue, and I urge my colleagues to support this important step in making our immigration laws fairer.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 1511. A bill to designate the Department of Veterans Affairs Medical Center in Prescott, Arizona, as the ''Bob Stump Department of Veterans Affairs Medical Center''; to the Committee on Veterans' Affairs.

Mr. KYL. Mr. President, today Senator MCCAIN and I are introducing legislation to rename the VA Medical Center in Prescott, AZ. to honor our colleague Bob Stump, who died on June 20. This legislation was introduced by Congressman JIM KOLBE and the other seven Arizona House Members on July 21.

I had the pleasure of serving with Bob Stump in the House of Representatives in the late 1980s and early 1900s. He was a fine man, and a great public servant. A patriot and a hard-working legislator, he did not seek headlines or glory, preferring to work quietly, without fanfare, on behalf of Arizona's interests—and the Nation's.

For Bob Stump, actions were louder than words. He didn't say much, but you always knew where he stood.

Before coming to Congress, Bob served in both houses of the Arizona legislature from 1959 to 1976—that final year as president of the Arizona State Senate. His congressional tenure culminated in his six years as Chairman of the House Committee on Veterans' Affairs, a perch from which he improved the lives of his fellow veterans in innumerable ways. As Chairman of the House Armed Services Committee for two years, he helped to ensure America's military readiness by advocating tirelessly for better U.S. military technology and protecting the important work underway at Arizona's military bases.

Bob's concern for the military, of course, was personnel. When he entered the Navy to serve his country in time of war, he was all of 16 years old. He spent three years, 1943 to 1946, as a medic on the U.S.S. *Tulagi*. He was determined to protect Arlington National Cemetery and to see to it that a World War II memorial was approved for construction on the Mall here in Washington.

Bob Stump's work to promote the welfare of current and past members of the Armed Services is well-known to Arizona's veterans. By naming the Prescott VA Health Center in his honor, we will ensure that his exemplary character and contributions are remembered by all those who pass through its doors in the 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. 1511

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

SECTION 1. BOB STUMP DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, PRESCOTT, ARIZONA.

(a) DESIGNATION.—The Department of Veterans Affairs Medical Center located in Prescott, Arizona, is hereby designated as the ''Bob Stump Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference to such medical center in any law, regulation, map, document, or other paper of the United States shall be considered to be a reference to the Bob Stump Department of Veterans Affairs Medical Center.

Mr. MCCAIN. Mr. President, I am proud to join Senator KYL in introducing legislation that would rename the Veterans Administration medical center in Prescott, AZ after Bob Stump.

In June of this year, Arizonans suffered a major loss with the passing of Bob Stump, a native son who made his mark for our State and our Nation. Congressman Stump had a patriot's devotion to those who served our country in uniform. He will be deeply missed by his friends, family and a grateful Nation.

Congressman Stump served his country and the residents of Arizona admirably in the United States Navy, during World War II; in the Arizona State legislature; and in the United States Congress.

Congressman Stump's service in the House of Representatives was marked by this dedication to his constituents in Arizona. Never one for the trappings of a political office, Bob read and responded to all of his mail, he never had Press Secretary and often answered the office phone personally.

One could not overlook his leadership in Defense and Veterans issues. Serving as Chairman of the Veterans Affairs Committee, his work has so beneficial to America's veterans that a street in Arlington National Cemetery was named after him. Everywhere I travel, veterans remark to me that Bob Stump put Veterans needs first.

Bob's strong leadership of the House Armed Services Committee helped usher in many of the technological advances that characterize our modern military.

This legislation serves as a memorial to a member of Congress who left an indelible legacy.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1512. A bill to amend the Internal Revenue Code of 1986 to exclude from income and employment taxes and wage withholding property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders; to the Committee on Finance.

Mr. DODD. Mr. President. I am pleased to rise today with my colleague Senator LIEBERMAN to introduce legislation that would amend the Internal Revenue Code to exclude property tax abatements, provided by local governments to volunteer firefighters and emergency medical responders, from the definition of income and wages. Congressman JOHN LARSON of Connecticut introduced identical legislation in the House.

Seventy-five percent of firefighters in our country are volunteers. Unfortunately, statistics show that the number of volunteer firefighters and emergency responders have been declining in past years at an alarming rate. The number of volunteer firefighters around the country has declined by 5 to 10 percent since 1983, while the number of emergency calls made has sharply increased.

Many municipalities throughout the country, including the State of Connecticut, offer stipends and property tax abatements of up to $1,000 per year to volunteer firefighters, emergency medical technicians, paramedics, and ambulance drivers. These incentives have helped local fire departments in their volunteer recruitment efforts throughout the country.

Last year the IRS ruled that property tax abatements to volunteers should be treated as wages and income. This ruling would undermine the efforts of localities across the country to recruit more volunteer firefighters.

The bill that Senator LIEBERMAN and I are introducing amends the Internal Revenue Code to exclude property tax abatements and stipends for volunteer firefighters and emergency medical responders from the definition of income and wages. This bill would allow local governments around the country to continue providing these incentives to their volunteer firefighters and emergency medical responders.

The President has recently called for Americans to volunteer in their communities. When both heads of household hold full-time employment, it is often too difficult for them to take time away from their families without some form of compensation. A $1,000 property tax break is not a large request for the great service these men and women provide to our communities. They risk their lives for others. The least we can do is allow States and towns to offer them modest incentives to serve.

The IRS ruling undermines the good intentions and creative efforts of many localities. If our municipalities are willing to forgo their local tax revenues in order to ensure they have enough volunteer firefighters and emergency service providers to protect their communities, and if members of the community are doing their part by volunteering, then we, as a country should do our part and support local efforts to ensure that all our communities have adequate protection. And that is what our bill will ensure.

I hope that our colleagues will join us in supporting this legislation so that we can ensure that state and local governments have the flexibility to design and implement recruiting and retention programs that benefit not only the volunteer firefighters and emergency medical providers, but also the communities they protect.

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. 1512

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

SECTION 1. EXCLUSION FROM INCOME AND EMPLOYMENT TAXES AND WAGE WITHHOLDING FOR PROPERTY TAX REBATES AND OTHER BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 140 as section 140A and by inserting after section 139 the following new section:

''SEC. 140. PROPERTY TAX REBATES AND OTHER BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

''(a) EXCLUSION.—Gross income shall not include a qualified property tax rebate or other benefit.

''(b) QUALIFIED PROPERTY TAX REBATE OR OTHER BENEFIT.—For purposes of subsection (a)—

''(1) IN GENERAL.—The term 'qualified property tax rebate or other benefit' means a rebate of real or personal property taxes, or any other benefit, provided by a State or political subdivision on account of services performed as a member of a qualified volunteer emergency response organization.

''(2) QUALIFIED VOLUNTEER EMERGENCY RESPONSE ORGANIZATION.—The term 'qualified volunteer emergency response organization' means any volunteer organization—

''(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

''(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.''.

(2) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking the last item and inserting the following new items:

''Sec. 140. Property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders.

''Sec. 140A. Cross references to other Acts.''.

(b) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) any qualified property tax rebate or other benefit (as defined in section 140(b)).''.

(B) Section 209(a) of the Social Security Act is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) Any qualified property tax rebate or other benefit (as defined in section 140(b) of the Internal Revenue Code of 1986).''.

(2) UNEMPLOYMENT TAXES.—Section 3306(b) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ''; or'', and by inserting after paragraph (17) the following new paragraph:

''(18) any qualified property tax rebate or other benefit (as defined in section 140(b).''.

(3) WAGE WITHHOLDING.—Section 3401(a) of such Code (defining wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) for any qualified property tax rebate or other benefit (as defined in section 140(b).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mrs. HUTCHISON:

S. 1514. A bill to amend the Internal Revenue code of 1986 to reform certain excise taxes applicable to private foundations, and for other purposes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce legislation to address concerns regarding the operation of charitable foundations.

Well-publicized incidents of abuse by a few foundations have raised legitimate concerns about whether these entities are properly focusing resources on their philanthropic missions. In come cases, excessive amounts have gone toward administrative costs, high executive salaries and expensive travel.

My bill will help to ensure that more money is spent on charitable activities and that those who abuse the system are properly punished.

One proposal I support is included in the House version of the CARE Act, H.R. 7, the Charitable Giving Act of 1003. It would reduce the excise tax on investment income for foundations from two percent to one percent, allowing foundations to keep more money so they can direct it to those in need.

However, we must ensure this money actually goes toward the charitable activities for which it is intended. The House bill tries to do this by preventing any administrative costs from being counted as part of the five percent annual distribution requirement foundations must meet. While the legislation moves in the right direction, the language is too broad and may inadvertently punish some foundations that are acting responsibly.

Many foundations will find it difficult to earn the returns necessary to maintain their underlying endowments and cover the five percent requirement in addition to all administrative costs. This could lead to a diminished ability to fulfill their missions over time, as underlying endowments are eroded as an unintended consequence. Some foundations may try to meet this challenge by reducing important, legitimate spending such as on legal compliance.

The legislation I am introducing will better address these issues. First, I agree we should reduce the excise tax on foundations from two percent to one percent. I also agree we should consider limiting which administrative expenses are counted as distributions. However, I propose doing so in a more defined manner.

My bill would exclude general overhead expenses, management salaries and excessive travel expenses from being counted as distributions. It will allow expenses directly attributable to administering grants and direct charitable giving, as well as expenses related to maintaining legal compliance, to continue to be included.

By focusing these restrictions on the expenses which tend to be the source of abuse, we can deal with the root issues while minimizing unintended consequences.

My bill also goes further than other proposals in penalizing wrongdoers. It will raise the penalty for those who abuse the system by ''self-dealing'' from a five percent to a 25 percent excise tax on the amounts involved.

My bill will lower the net investment tax, tighten the regulations allowing administrative expenses to be counted as distributions, and increase penalties for those abusing the system. It does so with drastic measures that could lead to a decline in foundations in the long-term. Together these measures will instill more discipline on the foundation community and result in more money going to worthy causes.

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. 1514

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Philanthropy Expansion and Responsibility Act of 2003''.

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

SEC. 2. REFORM OF CERTAIN EXCISE TAXES RELATED TO PRIVATE FOUNDATIONS.

(a) REDUCTION OF TAX ON NET INVESTMENT INCOME.—Section 4940(a) (relating to tax-exempt foundations) is amended by striking ''2 percent'' and inserting ''1 percent''.

(b) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS.—Section 4940 (relating to excise tax based on investment income) is amended by striking subsection (e).

(c) MODIFICATION OF EXCISE TAX ON SELF-DEALING.—The second sentence of section 4941(a)(1) (relating to initial excise tax imposed on self-dealer) is amended by striking ''5 percent'' and inserting ''25 percent''.

(d) MODIFICATION OF EXCISE TAX ON FAILURE TO DISTRIBUTE INCOME.—

(1) CERTAIN ADMINISTRATIVE EXPENSES NOT TREATED AS DISTRIBUTIONS.—

(A) IN GENERAL.—Section 4942(g)(1)(A) (defining qualifying distributions) is amended by striking ''(including that portion of reasonable and necessary administrative expenses)'' and inserting ''(including that portion of reasonable and necessary administrative expenses which are directly attributable to direct charitable activities, grant selection activities, grant monitoring and administration activities, compliance with applicable Federal, State, or local law, or furthering public accountability of the private foundation, except as provided in paragraph (4))''.

(B) LIMITATIONS.—Section 4942(g) is amended by striking paragraph (4) and inserting the following new paragraphs:

''(4) LIMITATION ON ADMINISTRATIVE EXPENSES TREATED AS DISTRIBUTIONS.—For purposes of paragraph (1)(A), the following administrative expenses shall not be treated as qualifying distributions:

''(A) Any compensation paid to persons who are considered disqualified persons.

''(B) Any traveling expenses incurred for travel outside the United States.

''(C) Any traveling expenses incurred for transportation by air solely from one point in the United States to another point in the United States via first-class transportation on a commercial aircraft or via a private aircraft.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of paragraphs (1) and (4). Such regulations shall provide that administrative expenses which are excluded from qualifying distributions solely by reason of the limitations in paragraph (1) or (4) shall not subject a private foundation to any other excise taxes imposed by this subchapter.''.

(2) DISALLOWANCE NOT TO APPLY TO CERTAIN PRIVATE FOUNDATIONS.—

(A) IN GENERAL.—Section 4942(j)(3) (defining operating foundation) is amended—

(i) by striking ''(within the meaning of paragraph (1) or (2) of subsection (g))'' each place it appears, and

(ii) by adding at the end the following new sentence: ''For purposes of this paragraph, the term 'qualifying distributions' means qualifying distributions within the meaning of paragraph (1) or (2) of subsection (g) (determined without regard to subsection (g)(4)).''.

(B) CONFORMING AMENDMENT.—Section 4942(f)(2)(C)(i) is amended by inserting ''(determined without regard to subsection (g)(4))'' after ''within the meaning of subsection (g)(1)(A)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

By Mr. GREGG:

S. 1515. A bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach

these subjects, and to other students; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, today I am proud to introduce the Higher Education for Freedom Act. This bill will establish a competitive grant program making funds available to institutions of higher education, centers within such institutions, and associated nonprofit foundations to promote programs focused on the teaching and study of traditional American history and government, and the history and achievements of Western Civilization, at both the graduate and undergraduate level, including those that serve students enrolled in K–12 teacher education programs.

Today, more than ever, it is important to preserve and defend our common heritage of freedom and civilization, and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded. This basic knowledge is not on essential to the full participation of our citizenry in America's civic life, but also to the continued success of the American experiment in self-government, binding together a diverse people into a single Nation with common purposes.

However, college students' lack of historical literacy is quite startling, and too few of today's colleges and universities are focused on the task of imparting this crucial knowledge to the next generation. One survey of students at America's top colleges reported that seniors could not identify Valley Forge, words from the Gettysburg Address, or even the basic principles of the U.S. Constitution. Given high-school level American history questions, 81 percent of the seniors would have received a D or F, the report found.

One college professor even informed me that her students did not know which side Lee was on during the Civil War, or whether the Russians were allies or enemies in World War II. A student of hers even asked why anyone should care what the Founding Fathers wrote.

Thomas Jefferson once wrote, ''If a nation expects to be ignorant—and free—in a state of civilization, it expects what never was and never will be.'' I believe the time has come for Congress to do something to promote the teaching of traditional American history at the postsecondary level, and I urge my colleagues to support this 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. 1515

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 ''Higher Education for Freedom Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Given the increased threat to American ideals in the trying times in which we live, it is important to preserve and defend our common heritage of freedom and civilization and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded in order to provide the basic knowledge that is essential to full and informed participation in civic life and to the larger vibrancy of the American experiment in self-government, binding together a diverse people into a single Nation with a common purpose.

(2) However, despite its importance, most of the Nation's colleges and universities no longer require United States history or systematic study of Western civilization and free institutions as a prerequisite to graduation.

(3) In addition, too many of our Nation's elementary and secondary school history teachers lack the training necessary to effectively teach these subjects, due largely to the inadequacy of their teacher preparation.

(4) Distinguished historians and intellectuals fear that without a common civic memory and a common understanding of the remarkable individuals, events, and ideals that have shaped our Nation and its free institutions, the people in the United States risk losing much of what it means to be an American, as well as the ability to fulfill the fundamental responsibilities of citizens in a democracy.

(b) PURPOSES.—The purposes of this Act are to promote and sustain postsecondary academic centers, institutes, and programs that offer undergraduate and graduate courses, support research, and develop teaching materials, for the purpose of developing and imparting a knowledge of traditional American history, the American Founding, and the history and nature of, and threats to, free institutions, or of the nature, history and achievements of Western Civilization, particularly for—

(1) undergraduate students who are enrolled in teacher education programs, who may consider becoming school teachers, or who wish to enhance their civic competence;

(2) elementary, middle, and secondary school teachers in need of additional training in order to effectively teach in these subject areas; and

(3) graduate students and postsecondary faculty who wish to teach about these subject areas with greater knowledge and effectiveness.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ELIGIBLE INSTITUTION.—The term ''eligible institution'' means—

(A) an institution of higher education;

(B) a specific program within an institution of higher education; and

(C) a non-profit history or academic organization associated with higher education whose mission is consistent with the purposes of this Act.

(2) FREE INSTITUTION.—The term ''free institution'' means an institution that emerged out of Western Civilization, such as democracy, individual rights, market economics, religious freedom and tolerance, and freedom of thought and inquiry.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the same meaning given that term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

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

(5) TRADITIONAL AMERICAN HISTORY.—The term ''traditional American history'' means—

(A) the significant constitutional, political, intellectual, economic, and foreign policy trends and issues that have shaped the course of American history; and

(B) the key episodes, turning points, and leading figures involved in the constitutional, political, intellectual, diplomatic, and economic history of the United States.

SEC. 4. GRANTS TO ELIGIBLE INSTITUTIONS.

(a) IN GENERAL.—From amounts appropriated to carry out this Act, the Secretary shall award grants, on a competitive basis, to eligible institutions, which grants shall be used for—

(1) history teacher preparation initiatives, that—

(A) stress content mastery in traditional American history and the principals on which the American political system is based, including the history and philosophy of free institutions, and the study of Western civilization; and

(B) provide for grantees to carry out research, planning, and coordination activities devoted to the purposes of this Act; and

(2) strengthening postsecondary programs in fields related to the American founding, free institutions, and Western civilization, particularly through—

(A) the design and implementation of courses, lecture series and symposia, the development and publication of instructional materials, and the development of new, and supporting of existing, academic centers;

(B) research supporting the development of relevant course materials;

(C) the support of faculty teaching in undergraduate and graduate programs; and

(D) the support of graduate and postgraduate fellowships and courses for scholars related to such fields.

(b) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall establish criteria by regulation, which shall, at a minimum, consider the education value and relevance of the institution's programming to carrying out the purposes of this Act and the expertise of key personnel in the area of traditional American history and the principals on which the American political system is based, including the political and intellectual history and philosophy of free institutions, the American Founding, and other key events that have contributed to American freedom and the study of Western civilization.

(c) GRANT APPLICATION.—An eligible institution that desires to receive a grant under this Act shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe by regulation.

(d) GRANT REVIEW.—The Secretary shall establish procedures for reviewing and evaluating grants made under this Act.

(e) GRANT AWARDS.—

(1) MAXIMUM AND MINIMUM GRANTS.—The Secretary shall award each grant under this Act in an amount that is not less than $400,000 and not more than $6,000,000.

(2) EXCEPTION.—A subgrant made by an eligible institution under this Act to another eligible institution shall not be subject to the minimum amount specified in paragraph (1).

(f) MULTIPLE AWARDS.—For the purposes of this Act, the Secretary may award more than 1 grant to an eligible institution.

(g) SUBGRANTS.—An eligible institution may use grant funds provided under this Act to award subgrants to other eligible institutions at the discretion of, and subject to the oversight of, the Secretary.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated—

(1) $140,000,000 for fiscal year 2004; and

(2) such sums as may be necessary for each of the succeeding 5 fiscal years.

By. Mr. DOMENICI (for himself and Mr. CAMPBELL):

S. 1516. A bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the commissioner of Reclamation, to carry out an assessment and demonstration program to assess potential increases in water availability for Bureau of Reclamation projects and other uses through control of salt cedar and Russian olive; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I rise today to reintroduce a piece of legislation that is of paramount importance to the State of New Mexico and many other western States. This bill will address the mounting pressures brought on by the growing demands throughout the west of a diminishing water supply.

This bill that I am introducing today authorizes the Department of Interior acting through the Bureau of Reclamation to establish a series of research and demonstration programs to help with the eradication of this non-native species on rivers in the Western United States. This bill will help develop the scientific knowledge and the experience base to build a strategy to control these invasive thieves. In addition to projects that could benefit the Pecos and the Rio Grande, the bill allows other states in the west such as Texas, Colorado, Utah, California and Arizona to develop and participate in projects as well.

Allow me to explain the importance of this bill. A water crisis has ravaged the west for four years. Drought conditions are expected to expand into the upper mid-west this year. Last year snow packs were abnormally low, causing severe drought conditions. Snow pack conditions this year were also low, but marginally better in the southwest. The rest of the west did not have promising winter snows and spring rains.

The presence of invasive species compounds the drought situation in many states. For instance, New Mexico is home to a vast amount of Salt Cedar. Salt Cedar is a water-thirsty non-native tree that continually strips massive amounts of water out of New Mexico's two predominant water supplies the Pecos and the Rio Grande rivers.

We have already had numerous catastrophic fires in our Nation's forests including the riparian woodland—the Bosque—that runs through the heart of New Mexico's most populous city. One of the reasons this fire ran its course through Albuquerque was the presence of large amounts of Salt Cedar, a plant that burns as easily as it consumes water.

Estimates show that one mature Salt Cedar tree can consume as much as 200 gallons of water per day; over the growing season that is 7 acre feet of water for each acre of Salt Cedar. In addition to the excessive water consumption, Salt Cedars increase fire, increase river channelization and flood frequency, decrease water flow, and increase water and soil salinity along the river. Every problem that drought causes is exacerbated by the presence of Salt Cedar.

I know that the seriousness of the water situation in New Mexico becomes more acute every single day. This drought has affected every New Mexican and nearly everyone in the west in some way. Wells are running dry, farmers are being forced to sell livestock, many of our cities are in various stages of conservation and many, many acres have been charred by fire.

The drought and the mounting legal requirements on both the Pecos and Rio Grande rivers are forcing us toward a severe water crisis in New Mexico. Indeed, every river in the inter-mountain west seems to be facing similar problems. Therefore, we must bring to bear every tool at our disposal for dealing with the water shortages in the west.

Solving such water problems is one of my top priorities and I assure this Congress that this bill will receive prompt attention by the Energy and Natural Resources Committee. Controlling water thirsty invasive species is one significant and substantial step in the right direction for the dry lands of the west.

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. 1516

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 ''Salt Cedar Control Demonstration Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the western United States is currently experiencing its worst drought in modern history;

(2) it is estimated that throughout the western United States salt cedar and Russian olive—

(A) occupy between 1,000,000 and 1,500,000 acres of land; and

(B) are non-beneficial users of 2,000,000 to 4,500,000 acre-feet of water per year;

(3) the quantity of non-beneficial use of water by salt cedar and Russian olive is greater than the quantity that valuable native vegetation would use;

(4) much of the salt cedar and Russian olive infestation is located on Bureau of Land Management land or other land of the Department of the Interior; and

(5) as drought conditions and legal requirements relating to water supply accelerate water shortages, innovative approaches are needed to address the increasing demand for a diminishing water supply.

SEC. 3. SALT CEDAR AND RUSSIAN OLIVE ASSESSMENT AND DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—In furtherance of the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 (106 Stat. 4600), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this Act as the ''Secretary''), shall carry out a salt cedar and Russian olive assessment and demonstration program to—

(1) assess the extent of the infestation of salt cedar and Russian olive in the western United States; and

(2) develop strategic solutions for long-term management of salt cedar and Russian olive.

(b) ASSESSMENT.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation in the western United States. The assessment shall—

(1) consider past and ongoing research on tested and innovative methods to control salt cedar and Russian olive;

(2) consider the feasibility of reducing water consumption;

(3) consider methods of and challenges associated with the restoration of infested land;

(4) estimate the costs of destruction of salt cedar and Russian olive, biomass removal, and restoration and maintenance of the infested land; and

(5) identify long-term management and funding strategies that could be implemented by Federal, State, and private land managers.

(c) DEMONSTRATION PROJECTS.—The Secretary shall carry out not less than 5 projects to demonstrate and evaluate the most effective methods of controlling salt ceder and Russian olive. Projects carried out under this subsection shall—

(1) monitor and document any water savings from the control of salt cedar and Russian olive;

(2) identify the quantity of, and rates at which, any water savings under paragraph (1) return to surface water supplies;

(3) assess the best approach to and tools for implementing available control methods;

(4) assess all costs and benefits associated with control methods and the restoration and maintenance of land;

(5) determine conditions under which removal of biomass is appropriate and the optimal methods for its disposal or use;

(6) define appropriate final vegetative states and optimal revegetation methods; and

(7) identify methods for preventing the regrowth and reintroduction of salt cedar and Russian olive.

(d) CONTROL METHODS.—The demonstration projects carried out under subsection (c) may implement 1 or more control method per project, but to assess the full range of control mechanisms—

(1) at least 1 project shall use airborne application of herbicides;

(2) at least 1 project shall use mechanical removal; and

(3) at least 1 project shall use biocontrol methods such as goats or insects.

(e) IMPLEMENTATION.—A demonstration project shall be carried out during a time period and to a scale designed to meet the requirements of subsection (c).

(f) COSTS.—Each demonstration project under subsection (c) shall be carried out at a cost of not more than $7,000,000, including costs of planning, design, implementation, maintenance, and monitoring.

(2) COST-SHARING.—

(A) FEDERAL SHARE.—The Federal share of the costs of a demonstration project shall not exceed 75 percent.

(B) FORM OF NON-FEDERAL SHARE.—The non-Federal share of the costs of a demonstration project may be provided in the form of in-kind contributions, including services provided by a State agency.

(g) COOPERATION.—In carrying out the program, the Secretary shall—

(1) use the expertise of Federal agencies, national laboratories, Indian tribes, institutions of higher education, State agencies, and soil and water conservation districts that are actively conducting research on or implementing salt cedar and Russian olive control activities; and

(2) cooperate with other Federal agencies and affected States, local units of government, and Indian tribes.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act—

(1) $50,000,000 for fiscal year 2004; and

(2) such sums as are necessary for each fiscal year thereafter.

By Mr. BINGAMAN (for himself and Mr. GRAHAM of Florida):

S. 1517. A bill to revoke and Executive Order relating to procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records; to the Committee on Governmental Affairs.

Mr. BINGAMAN. Mr. President, I rise today with my colleague from Florida, Senator GRAHAM, to introduce a very simple piece of legislation that would revoke President Bush's Executive Order 13233 and put back in force President Reagan's Executive Order 12667—restoring the American people's access to Presidential papers. This bill is the companion to H.R. 1493, which is sponsored by Representative DOUG OSE and has enjoyed bipartisan support in the House.

Twenty-five years ago, this body passed the Presidential Records Act and declared that a President's papers were the property of the people of the United States of America and were to be administered by the National Archives and Records Administration, or NARA. The Act provided that Presidential papers would be made available twelve years after a President left office, allowing the former or incumbent President the right to claim executive privilege for particularly sensitive documents. In order to fulfill that mandate, President Reagan in 1989 signed Executive Order 12667, which gave the former or incumbent President thirty days to claim executive privilege.

However, in 2001, President Bush signed Executive Order 13233, nullifying President Reagan's order and imposing new regulations for obtaining Presidential documents. President Bush's new order greatly restricts access to Presidential papers by forcing all requests for documents, no matter how innocuous, to be approved by both the former President and current White House. In this way the order goes against the letter and the spirit of the Presidential Records Act by requiring the NARA to make a presumption of non-disclosure, thus allowing the White House to prevent the release of records simply by inaction.

The President's order also limits what types of papers are available by expanding the scope of executive privilege into new areas—namely communications between the President and his advisors and legal advice given to the President. Also, former Presidents can now designate third parties to exercise executive privilege on their behalf, meaning that Presidential papers could remain concealed many years after a President's death. These expansions raise some serious constitutional questions and cause unnecessary controversy that could end up congesting our already overburdened courts. My legislation simply seeks to restore a legitimate, streamlined means of carrying out this body's wishes—making Presidential records available for examination by the public and by Congress.

The administration shouldn't fear passage of this bill. Any documents that contain sensitive national security information would remain inaccessible, as would any documents pertaining to law enforcement or the deliberative process of the executive branch. Executive privilege for both former and current Presidents would still apply to any papers the White House designates. With these safeguards in place, there is no reason to further hinder access to documents that are in some cases more than twenty years old.

By not passing this bill, the Congress would greatly limit its own ability to investigate previous administrations, not to mention limit the ability of historians and other interested parties to research the past. Knowledge of the past enriches and informs our understanding of the present, and by limiting our access to these documents we do both ourselves and future generations a great disservice. Numerous historians, journalists, archivists and other scholars have voiced their disapproval of Executive Order 13233 because they understand how important access to Presidential papers can be to accurately describing and learning from past events. We here in the Congress cannot afford to surrender our ability to investigate previous Presidential administrations because doing so would remove a vitally important means of ensuring Presidential accountability.

I believe it is time for these documents to become part of the public record. I believe in open, honest, and accountable government, and I do not believe in keeping secrets from the American people. The Presidential Records Act was one of this country's most vital post-Watergate reforms and it remains vitally important today. In these times when trust in government is slipping more and more every day, we need to send a statement to the American people that we here in Washington don't need to hide from public scrutiny—that instead we welcome and encourage public scrutiny. This bill will send just such a message.

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. 1517

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

SECTION 1. REVOCATION OF EXECUTIVE ORDER OF NOVEMBER 1, 2001.

Executive Order number 13233, dated November 1, 2001 (66 Fed. Reg. 56025), shall have no force or effect, and Executive Order number 12667, dated January 18, 1989 (54 Fed. Reg. 3403), shall apply by its terms.

By Mr. ENZI:

S. 1518. A bill to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce a bill that will help bring about a more reliable system of medical justice for all Americans.

Earlier this month, we had a robust debate on a critical issue—medical liability reform. Though a majority of the Members of this body wanted to begin working to pass the bill, we didn't have the 60 Senators necessary to begin the real work on the legislation.

I co-sponsored that bill, the Patients First Act, and I still support it. Passing the Patients First Act would be an important short-term step to controlling the excesses in our legal system that have sent medical liability insurance premiums through the roof. Skyrocketing premiums are forcing doctors to move their practices to States with better legal environments and lower insurance premiums. This is endangering the availability of critical healthcare services in many areas of Wyoming and other states.

Throughout our debate, I heard many of my colleagues say that they wanted to work on this issue, but that they simply could not support the bill as it stood. We heard that the bill approaches the issue from too narrow of a perspective. We heard that the bill's caps on non-economic damages are unfair to patients, despite the fact that the bill places no limits whatsoever on a patient's right to recover all quantifiable economic damages.

While I disagree with my colleagues who oppose the Patients First Act, I

respect their opposition. I also trust that they sincerely want to help solve our Nation's medical liability and litigation crisis.

During the debate this month, I noticed something interesting. While we argued the ''pros and cons'' of the bill, no one stood up to defend our current system of medical litigation. Now, we heard a lot about the caps, and the insurance industry, and we heard Senators say that ''Yes, there is a problem, but the bill before us won't solve it.''

One thing we didn't hear was a rousing defense of our medical litigation system. Even some of the lawyers in this body agreed that frivolous lawsuits are a problem and that our medical litigation system needs reform.

Why didn't we hear anyone defend the merits of our current medical litigation system? It's because our system doesn't work. It simply doesn't work for patients or for healthcare providers.

Compensation to patients injured by healthcare errors is neither prompt nor fair. The randomness and delay associated with medical litigation does not contribute to timely, reasonable compensation for most injured patients. Some injured patients get huge jury awards, while many others get nothing at all.

Let's look at the facts. In 1991, a group of researchers published a study in the New England Journal of Medicine. The study, known as the Harvard Medical Practice Study, was the basis for the Institute of Medicine's estimate that nearly 100,000 people die every year from healthcare errors.

As part of their study, the researchers reviewed the medical records of a random sample of more than 31,000 patients in New York State. They matched those records with statewide data on medical malpractice claims. The researchers found that nearly 30 percent of injuries caused by medical negligence resulted in temporary disability, permanent disability or death. However, less than 2 percent of those who were injured by medical negligence filed a claim. These figures suggest that most people who suffer negligent injuries don't receive any compensation.

When a patient does decide to litigate, only a few recover anything. Only one of every ten medical malpractice cases actually goes to trial, and of those cases, plaintiffs win less than one of every five. In addition, patients who file suit and are ultimately successful must wait a long time for their compensation—the average length of a medical malpractice action filed in state court is about 30 months.

While the vast majority of malpractice cases that go to trial are settled before the court hands down a verdict, the settlements even then don't guarantee that patients are compensated fairly, particularly after legal fees are subtracted. Research shows that for every dollar paid in malpractice insurance premiums, about 40 cents in compensation is actually paid to the plaintiff—the rest goes for legal fees, court costs, and other administrative expenditures.

To sum up: most patients injured by negligence don't file claims or receive compensation. Few of those that do file claims and go to court recover anything, and those who are successful wait a long time for their compensation. And those who settle out of court end up receiving only 40 cents for every dollar that healthcare providers pay in liability insurance premiums.

It's hard to say that our medical litigation system does right by patients in light of those facts. Unfortunately, our system doesn't work for healthcare providers either.

Earlier, I spoke about those Harvard researchers who found that fewer than 2 percent of those who were injured by medical negligence even filed a claim. As they reviewed the medical records for their study, the researchers also found another interesting fact—most of the providers against whom claims were eventually filed were not negligent at all.

That's right—most providers who were sued had not committed a negligent act.

In matching the records they reviewed to data on malpractice claims, the Harvard researchers found 47 actual malpractice claims. In only 8 of the 47 claims did they find evidence that medical malpractice had caused an injury. Even more amazingly, the physician reviewers found no evidence of any medical injury, negligent or not, in 26 of the 47 claims. However, 40 percent of these cases where they found no evidence of negligence nonetheless resulted in a payment by the provider. Basically, the researchers found no positive relationship between medical negligence and compensation.

That study was based on 1984 data. The same group of researchers conducted another study in Colorado and Utah in 1992, and they found the same thing. As in the 1984 study, they found that only 3 percent of patients who suffered an injury as a result of negligence actually sued. And again, physician reviewers could not find negligence in most of the cases in which lawsuits were filed.

Now, I assume that the patients who sued had either an adverse medical outcome, or at least an outcome that was less satisfactory than the patient expected. But our medical litigation system is not supposed to compensate patients for adverse outcomes or dissatisfaction—it's supposed to compensate patients who are victims of negligent behavior. It's supposed to be a deterrent to substandard medical care.

It's not fair to doctors and hospitals that they must pay to defend against meritless lawsuits. Nor is it fair that they must face a choice between settling for a small sum, even if they aren't at fault, so that they avoid getting sucked into a whirlpool of our medical litigation system.

It's not hard to understand why physicians and hospitals and their insurers want to stay out of court. When they lose, the decisions are increasingly resulting in mega-awards based on subjective ''non-economic'' damages. The number of awards exceeding $1 million grew by 50 percent between the periods of 1994–1996 and 1999–2000. Today, more than half of all jury awards exceed $1 million.

As a result, when a patient suffers a bad outcome and sues, providers have an incentive to settle the case out of court, even if the provider isn't at fault. But is this how our medical litigation system is supposed to work—as a tool for shaking down our healthcare providers?

Let's face it—our medical litigation system is broken. It doesn't work for patients or providers. Even worse, it replaces the trust in the provider-patient relationship with distrust.

Then, when courts and juries render verdicts with huge awards that bear no relation to the conduct of the defendants, this destabilizes the insurance markets and sends premiums skyrocketing. This forces many physicians to curtail, move or drop their practices, leaving patients without access to necessary medical care. This is a particular problem in states like Wyoming, where we traditionally struggle with recruiting doctors and other healthcare providers.

Perhaps we could live with this flawed system if litigation served to improve quality or safety, but it doesn't. Litigation discourages the exchange of critical information that could be used to improve the quality and safety of patient care. The constant threat of litigation also drives the inefficient, costly and even dangerous practice of ''defensive medicine.''

Yes, indeed, defensive medicine is dangerous. A recent study found that one of every 1200 children who receive a CAT scan may die later in life from radiation-induced cancer. Knowing this puts a physician faced with anxious parents in a difficult situation. Does the doctor use his or her professional judgment and tell the parents of a sick child not to worry, or does the doctor order the CAT scan and subject the child to radiation that is probably unnecessary, just to provide some protection against a possible lawsuit?

We have a medical litigation system in which many patients who are hurt by negligent actions receive no compensation for their loss. Those who do receive compensation end up with about 40 cents of every premium dollar after legal fees and other costs are subtracted. And the likelihood and the outcomes of lawsuits and settlements bear little relation to whether or not a healthcare provider was at fault.

We like to say that justice is blind. With respect to our medical litigation system, I would say that justice is absent and nowhere to be found.

During our debate on the Patients First Act, I said that the current medical liability crisis and the shortcomings of our medical litigation system make it clear that it is time for a major change. I also said that regardless of how we voted, we all should work toward replacing the current medical tort liability scheme with a more reliable and predictable system of medical justice.

Today, I am introducing a bill that would help achieve that goal.

Most of us are familiar with the report on medical errors from the Institute of Medicine, also known as the IOM. Many of us may be less familiar with another report that the IOM published earlier this year. That report is called ''Fostering Rapid Advances in Healthcare: Learning from System Demonstrations.''

Our Secretary of Health and Human Services, Tommy Thompson, challenged the IOM to identify bold ideas that would challenge conventional thinking about some of the most vexing problems facing our healthcare system. In response, an IOM committee developed this report, which identified a set of demonstration projects that committee members felt would break new ground and yield a very high return-on-investment in terms of dollars and health.

Medical liability was one of the areas upon which the IOM committee focused. The IOM suggested that the federal government should support demonstration projects in the states. These demonstrations should be based on ''replacing tort liability with a system of patient-centered and safety-focused non-judicial compensation.''

The bill I am introducing today is in the spirit of this IOM report. This bill, the Reliable Medical Justice Act, would authorize funding for States to create demonstration programs to test alternatives to current medical tort litigation.

The funding to States under this bill would cover planning grants for developing proposals based on the models or other innovative ideas. Funding to States would also include the initial costs of getting the alternatives up and running.

The Reliable Medical Justice Act would require participating states and the Federal Government to collaborate in continuous evaluations of the results of the alternatives as compared to traditional tort litigation. This way, all States and the federal government can learn from new approaches.

By funding demonstration projects, I believe Congress could enable States to experiment with and learn from ideas that could provide long-term solutions to the current medical liability and litigation crisis.

In introducing this bill, I wanted to provide some alternative ideas that would contribute to the debate. As a result, the bill describes three models to which states could look in designing their alternatives.

For instance, a State could provide healthcare providers and organizations with immunity from lawsuits if they make a timely offer to compensate an injured patient for his or her actual net economic loss, plus a payment for pain and suffering if experts deem such a payment to be appropriate. This could give a healthcare provider who makes an honest mistake the chance to make amends financially with a patient, without the provider fearing that their honesty would land them in a lawsuit.

Another idea would be for a state to set up classes of avoidable injuries and a schedule of compensation for them, and then establish an administrative board to resolve claims related to those injuries. A scientifically rigorous process of identifying preventable injuries and setting appropriate compensation would be preferable to the randomness of the current system.

Still another option would be for a state to establish a special healthcare court for adjudicating medical malpractice cases. For this idea to work, the State would need to ensure that the presiding judges have expertise in and an understanding of healthcare, and allow them to make binding rulings on issues like causation compensation, and standards of care.

We already have specialized courts for complicated issues like taxes and highly charged issues like substance abuse and domestic violence. With all the flaws in our current medical litigation system, perhaps we should consider special courts for the complex and emotional issue of medical malpractice.

I believe one thing in our medical liability debate is absolutely clear—people are demanding change. Ten States have passed some liability reform in the past year, and another 17 have debated it. States are heeding this call for change, and Congress should support those efforts.

My own State, Wyoming, had a lively legislative debate on medical liability reform this year, but we have a constitutional amendment that prohibits limits on the amounts that can be recovered through lawsuits. The Wyoming Senate considered a bill to amend our State's constitution to create a commission on healthcare errors. That commission would have had the power to review claims, decide if healthcare negligence had occurred, and determine the compensation for the death or injury according to a schedule or formula provided by law. However, the bill died in a tie vote on the Wyoming Senate floor.

According to one of the sponsors of the bill, Senator Charlie Scott, one of the biggest obstacles to passage was the uncertainty surrounding this new idea. No one had any basis for knowing what a proper schedule or formula for compensation would be. No one knew how much the system might cost, or how much injured patients would recover compared to what they recover now.

Senator Scott wrote me to say that federal support for finding answers to these questions might help the bill's sponsors sufficiently respond to the legitimate concerns of their fellow Wyoming legislators. We should be helping state legislators like Senator Scott develop thoughtful and innovative ideas such as the one he has proposed. That's one of the reasons I am offering this bill.

Clearly, the American people and their elected representatives have identified the need to reform our current medical litigation system. The United States Senate did not vote to proceed to the Patients First Act this month, but no member of this body denied that there is a medical liability crisis, or that Congress needs to act sooner rather than later.

While we continue that debate, we ought to lend a hand to States that are working to change their current medical litigation systems and to develop creative alternatives that could work much better for patients and providers. The States have been policy pioneers in many areas—workers' compensation, welfare reform, and electricity de-regulation, to name three. Medical litigation should be the next item on the agenda of the laboratories of democracy that are our 50 States.

No one questions the need to restore reliability to our medical justice system. But how do we begin the process? One way is to foster innovation by encouraging States to develop more rational and predictable methods for resolving healthcare injury claims. And that is what the Reliable Medical Justice Act aims to do.

In the long run, we would all be better off with a more reliable system of medical justice than we have today. I know that my fellow Senators recognize this, so I hope my colleagues on both sides of the aisle will work with me on this 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. 1518

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 ''Reliable Medical Justice Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation that promote early disclosure of health care errors and provide prompt, fair, and reasonable compensation to patients who are injured by health care errors; and

(2) to support and assist States in developing such alternatives.

SEC. 3. STATE DEMONSTRATION PROGRAMS TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

"SEC. 3990. STATE DEMONSTRATION PROGRAM TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

''(a) IN GENERAL.—The Secretary is authorized to award demonstration grants to States for the development, implementation, and evaluation of alternatives to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations.

''(b) DURATION.—The Secretary may award up to 7 grants under subsection (a) and each grant awarded under such subsection may not exceed a period of 10 years.

''(c) CONDITIONS FOR DEMONSTRATION GRANTS.—

''(1) REQUIREMENTS.—Each State desiring a grant under subsection (a) shall—

''(A) develop an alternative to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations that may be 1 of the models described in subsection (d); and

''(B) establish procedures to allow for patient safety data related to disputes resolved under subparagraph (A) to be collected and analyzed by organizations that engage in voluntary efforts to improve patient safety and the quality of health care delivery, in accordance with guidelines established by the Secretary.

''(2) ALTERNATIVE TO CURRENT TORT LITIGATION.—Each State desiring a grant under subsection (a) shall demonstrate how the proposed alternative described in paragraph (1)(A)—

''(A) makes the medical liability system more reliable;

''(B) enhances patient safety; and

''(C) maintains access to liability insurance.

''(3) SOURCES OF COMPENSATION.—Each State desiring a grant under subsection (a) shall identify the sources from and methods by which compensation would be paid for claims resolved under the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods may provide financial incentives for activities that improve patient safety.

''(4) SCOPE.—Each State desiring a grant under subsection (a) may establish a scope of jurisdiction (such as a designated geographic region or a designated area of health care practice) for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative.

''(d) MODELS.—

''(1) IN GENERAL.—Any State desiring a grant under subsection (a) that proposes an alternative described in paragraph (2), (3), or (4) shall be deemed to meet the criteria under subsection (c)(2).

''(2) EARLY DISCLOSURE AND COMPENSATION MODEL.—In the early disclosure and compensation model, the State shall—

''(A) provide immunity from tort liability (except in cases of fraud, or in cases of criminal or intentional harm) to any health care provider or health care organization that enters into an agreement to pay compensation to a patient for an injury;

''(B) set a limited time period during which a health care provider or health care organization may make an offer of compensation benefits under subparagraph (A), with consideration for instances where prompt recognition of an injury is unlikely or impossible;

''(C) require that the compensation provided under subparagraph (A) include—

''(i) payment for the net economic loss of the patient, on a periodic basis, reduced by any payments received by the patient under—

''(I) any health or accident insurance;

''(II) any wage or salary continuation plan; or

''(III) any disability income insurance;

''(ii) payment for the patient's pain and suffering, if appropriate for the injury, based on a capped payment schedule developed by the State in consultation with relevant experts; and

''(iii) reasonable attorney's fees;

''(D) not abridge the right of an injured patient to seek redress through the State tort system if a health care provider does not enter into a compensation agreement with the patient in accordance with subparagraph (A);

''(E) prohibit a patient who accepts compensation benefits in accordance with subparagraph (A) from filing a health care lawsuit against other health care providers or health care organizations for the same injury; and

''(F) permit a health care provider or health care organization that enters into an agreement to pay compensation benefits to an individual under subparagraph (A) to join in the payment of the compensation benefits of any health care provider or health care organization that is potentially liable, in whole or in part, for the injury.

''(3) ADMINISTRATIVE DETERMINATION OF COMPENSATION MODEL.—

''(A) IN GENERAL.—In the administrative determination of compensation model—

''(i) the State shall—

''(I) designate an administrative entity (in this paragraph referred to as the 'Board') that shall include representatives of—

''(aa) relevant State licensing boards;

''(bb) patient advocacy groups;

''(cc) health care providers and health care organizations; and

''(dd) attorneys in relevant practice areas;

''(II) set up classes of avoidable injuries that will be used by the Board to determine compensation under clause (ii)(II) and, in setting such classes, may consider 1 or more factors, including—

''(aa) the severity of the disability arising from the injury;

''(bb) the cause of injury;

''(cc) the length of time the patient will be affected by the injury;

''(dd) the degree of fault of the health care provider or health care organization; and

''(ee) standards of care that the State may adopt and their breach;

''(III) modify tort liability, through statute or contract, to bar negligence claims in court against health care providers and health care organizations for the classes of injuries established under subclause (II), except in cases of fraud, or in cases of criminal or intentional harm;

''(IV) outline a procedure for informing patients about the modified liability system described in this paragraph and, in systems where participation by the health care provider, health care organization, or patient is voluntary, allow for the decision by the provider, organization, or patient of whether to participate to be made prior to the provision of, use of, or payment for the health care service;

''(V) provide for an appeals process to allow for a review of decisions; and

''(VI) establish procedures to coordinate settlement payments with other sources of payment;

''(ii) the Board shall—

''(I) resolve health care liability claims for certain classes of avoidable injuries as determined by the State and determine compensation for such claims; and

''(II) develop a schedule of compensation to be used in making such determinations that includes—

''(aa) payment for the net economic loss of the patient, on a periodic basis, reduced by any payments received by the patient under any health or accident insurance, any wage or salary continuation plan, or any disability income insurance;

''(bb) payment for the patient's pain and suffering, if appropriate for the injury, based on a capped payment schedule developed by the State in consultation with relevant experts; and

''(cc) reasonable attorney's fees; and

''(iii) the Board may—

''(I) develop guidelines relating to—

''(aa) the standard of care; and

''(bb) the credentialing and disciplining of doctors; and

''(II) develop a plan for updating the schedule under clause (ii)(II) on a regular basis.

''(B) APPEALS.—The State, in establishing the appeals process described in subparagraph (A)(i)(V), may choose whether to allow for de novo review, review with deference, or some opportunity for parties to reject determinations by the Board and elect to file a civil action after such rejection. Any State desiring to adopt the model described in this paragraph shall indicate how such review method meets the criteria under subsection (c)(2).

''(C) TIMELINESS.—Any claim handled under the system described in this paragraph shall provide for adjudication that is more timely and expedited than adjudication in a traditional tort system.

''(4) SPECIAL HEALTH CARE COURT MODEL.—In the special health care court model, the State shall—

''(A) establish a special court for adjudication of disputes over injuries allegedly caused by health care providers or health care organizations;

''(B) ensure that such court is presided over by judges with expertise in and an understanding of health care;

''(C) provide authority to such judges to make binding rulings on causation, compensation, standards of care, and related issues;

''(D) provide for an appeals process to allow for a review of decisions; and

''(E) at its option, establish an administrative entity similar to the entity described in paragraph (3)(a)(i)(I) to provide advice and guidance to the special court.

''(e) APPLICATION.—Each State desiring a grant under subsection (a) shall submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.

''(f) REPORT.—Each State receiving a grant under subsection (a) shall submit to the Secretary a report evaluating the effectiveness of activities funded with grants awarded under such subsection at such time and in such manner as the Secretary may require.

''(g) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to the States awarded grants under subsection (a). Such technical assistance shall include the development, in consultation with States, of common definitions, formats, and data collection infrastructure for States receiving grants under this section to use in reporting to facilitate aggregation and analysis of data both within and between States. States not receiving grants under this section may also use such common definitions, formats, and data collection infrastructure.

''(h) EVALUATION.—

''(1) IN GENERAL.—The Secretary shall enter into a contract with an appropriate research organization to conduct an overall evaluation of the effectiveness of grants awarded under subsection (a) and to annually prepare and submit a report to the appropriate committees of Congress. Such an evaluation shall begin not later than 18

months following the date of implementation of the first program funded by a grant under subsection (a).

''(2) CONTENTS.—The evaluation under paragraph (1) shall include—

''(A) an analysis of the effect of the grants awarded under subsection (a) on the number, nature, and costs of health care liability claims;

''(B) a comparison of the claim and cost information of each State receiving a grant under subsection (a); and

''(C) a comparison between States receiving a grant under this section and States that did not receive such a grant, matched to ensure similar legal and health care environments, and to determine the effects of the grants and subsequent reforms on—

''(i) the liability environment;

''(ii) health care quality; and

''(iii) patient safety.

''(i) OPTION TO PROVIDE FOR INITIAL PLANNING GRANTS.—Of the funds appropriated pursuant to subsection (k), the Secretary may use a portion not to exceed $500,000 per State to provide planning grants to such States for the development of demonstration proposals meeting the criteria described in subsection (c). In selecting States to receive such planning grants, the Secretary shall give preference to those States in which current law would not prohibit the adoption of an alternative to current tort litigation.

''(j) DEFINITIONS.—In this section:

''(1) HEALTH CARE SERVICES.—The term 'health care services' means any services provided by a health care provider, or by any individual working under the supervision of a health care provider, that relate to—

''(A) the diagnosis, prevention, or treatment of any human disease or impairment; or

''(B) the assessment of the health of human beings.

''(2) HEALTH CARE ORGANIZATION.—The term 'health care organization' means any individual or entity which is obligated to provide, pay for, or administer health benefits under any health plan.

''(3) HEALTH CARE PROVIDER.—The term 'health care provider' means any individual or entity—

''(A) licensed, registered, or certified under Federal or State laws or regulations to provide health care services; or

''(B) required to be so licensed, registered, or certified but that is exempted by other statute or regulation.

''(4) NET ECONOMIC LOSS.—The term 'net economic loss' means—

''(A) reasonable expenses incurred for products, services, and accommodations needed for health care, training, and other remedial treatment and care of an injured individual;

''(B) reasonable and appropriate expenses for rehabilitation treatment and occupational training;

''(C) 100 percent of the loss of income from work that an injured individual would have performed if not injured, reduced by any income from substitute work actually performed; and

''(D) reasonable expenses incurred in obtaining ordinary and necessary services to replace services an injured individual would have performed for the benefit of the individual or the family of such individual if the individual had not been injured.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary. Amounts appropriated pursuant to this subsection shall remain available until expended.''.

By Mr. BINGAMAN (for himself, Ms. LANDRIEU, Mrs. LINCOLN, Mr. KERRY, Mrs. CLINTON, Mrs. MURRAY, Mr. LAUTENBERG, and Ms. MIKULSKI):

S. 1519. A bill to amend title XIX of the Social Security Act to extend medicare cost-sharing for qualifying individuals through 2004; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing today emergency legislation with Senators LANDRIEU, LINCOLN, KERRY, CLINTON, MURRAY, LAUTENBERG, and MIKULSKI that would extend a critical Federal-State program that assists low-income Medicare beneficiaries in paying their health premiums costs through the Medicaid program. This specific program, for low-income senior and disabled citizens, was enacted as part of the Balanced Budget Act of 1997 and is slated for expiration at the end of fiscal year 2003. The program was extended and is slated for expiration at the end of fiscal year 2003. The program was extended by the two continuing resolutions and the final appropriations bill through September 30, 2003. This legislation would simply further extend it for another year—through the end of 2004.

This program, known as the Qualifying Individual Program, or QI–1, within Medicaid is a block grant payment to states to pay the Medicare Part B premium of $58.70 per month in 2003 for individuals with monthly incomes between $887 and $997 for individuals and between $1,194 and $1,344 for couples. This covers Medicare beneficiaries with income between 120 and 135 percent of the Federal Poverty Level.

This amounts to a benefit of over $700 annually that many older and disabled Americans depend upon to pay for a portion of their health care costs, such as prescription drugs and supplemental coverage. Well over 120,000 people nationwide currently rely on the QI–1 and will be hard pressed to afford Medicare coverage without this assistance. In short, to prevent the erosion of existing low-income protections, Congress must extend the QI–1 program this year.

This is a bipartisan issue as well. President Bush had included QI–1 reauthorization in his fiscal year 2003 budget. Moreover, an extension has been included in S. 1, the ''Prescription Drug and Medicare Improvement Act of 2003,'' but the conference is certainly not going to be completed, passed by both the House and Senate, and signed into law by the President in time before the need for States to send out notices to beneficiaries alerting them to their forthcoming loss of cost sharing protections at the end of September.

As Ron Pollack, Executive Director at Families, USA notes in his letter of support for this legislation, ''Without an extension, over 120,000 low-income Medicare beneficiaries will have to be sent notices that the program is expiring. The result will be confusion, fear, and uncertainty among this population. This disruption can all be avoided by the quick and early passage of your extension bill.''

At the Federal level, the Congress and Administration are often criticized for failure to understand what are or are not the implications to real people. One hundred and twenty thousand low-income beneficiaries face the prospect of their cost sharing increasing by over $700 per year at the end of September. They cannot be assured that an extension will be passed or done so in a timely fashion. How are they supposed to plan and budget?

When we return in September, we will have just a few legislative days to pass an extension in the Senate, the House, and be signed by the President to stop the process of States having to send out disenrollment letters. We all know this can be very difficult to get through the Congress, as it requires unanimous consent, and may not occur in a timely fashion. If not, States will be forced to send out disenrollment letters to the 120,000 low-income seniors and the disabled that rely on the cost-sharing protections provided by the QI–1 program and begin to shut down their programs.

Again, this is emergency legislation that simply provisions a one-year extension of QI–1 program to prevent the cut-off of cost-sharing protections for 120,000 low-income Medicare beneficiaries. We should be engaging in improving health coverage for low-income elderly and disabled citizens rather than leaving these vulnerable Americans facing fear, uncertainty, disruption, and increasing costs.

I urge immediate passage of this legislation and ask unanimous consent that the text of the bill to be printed in the RECORD.

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

S. 1519

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

SECTION 1. EXTENSION OF MEDICARE COST-SHARING FOR QUALIFYING INDIVIDUALS THROUGH FISCAL YEAR 2004.

(a) IN GENERAL.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended to read as follows:

''(iv) subject to sections 1933 and 1905(p)(4), for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998, and ending with December 2004) for medicare cost-sharing described in section 1905(p)(3)(A)(ii) for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;''.

(b) STATE ALLOCATIONS.—Section 1933(c) of the Social Security Act (42 U.S.C. 1396u–3(c)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking ''and'' at the end;

(B) in subparagraph (E)—

(i) by striking ''fiscal year 2002'' and inserting ''each of fiscal years 2002 through 2004''; and

(ii) by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(F) the first quarter of fiscal year 2005 is $100,000,000.''; and

(2) in paragraph (2)(A), by striking ''the sum of'' and all that follows through ''1902(a)(10)(E)(iv)(II) in the State; to'' and inserting ''twice the total number of individuals described in section 1902(a)(10)(E)(iv) in the State; to''.

By Mr. GRAHAM of Florida (for himself, Mrs. FEINSTEIN, and Mr. ROCKEFELLER):

S. 1520. A bill to amend the National Security Act of 1947 to reorganize and improve the leadership of the intelligence community of the United States, to provide for the enhancement of the counterterrorism activities of the United States Government, and for other purposes; to the Select Committee on Intelligence.

Mr. ROCKEFELLER. Mr. President, I am pleased to be an original cosponsor of the ''9–11 Memorial Intelligence Reform Act'' which Senator BOB GRAHAM is introducing today to implement the recommendations of the Joint September 11 Inquiry of the Senate and House Intelligence Committees.

I expect that this important legislation will be referred to the Select Committee on Intelligence, on which I serve as vice chairman. I am committed to working with the Chairman and our colleagues to ensure that the matters addressed in the bill receive the full consideration and action that our national security requires. I expect that other committees, such as the Committee on the Judiciary, will have an interest in some matters covered by the bill, and I look forward to working with them.

The 9–11 Memorial Intelligence Reform Act covers matters ranging from the basic structure of the U.S. intelligence community to improvements in the sharing and analysis of intelligence information, reforms in domestic counterterrorism, and other issues identified in the course of the Joint Inquiry. For some matters, notably on reforming the leadership structure of the intelligence community, the bill proposes specific reforms. For various other matters, the bill calls for executive branch reports that can be the basis for subsequent congressional action.

There are two principal aspects of our work ahead.

The first is to systematically and thoroughly examine the steps that the President, the intelligence community, and other departments and agencies have taken to correct deficiencies in U.S. intelligence and counterterrorism. The Joint Inquiry's recommendations were first announced last December. In the months ahead, we should call on the agencies of the intelligence community, and other components of the executive branch, to report on their concrete measures, both since September 11 and since our recommendations were made public, to correct deficiencies. We should then assess those reports and Administration testimony in committee hearings.

Our second task is to consider reform proposals, including those in Senator GRAHAM's bill. In that regard, I should make clear that the answers proposed in the bill are not the last word on any of those subjects. They are, instead, a beginning point for the Senate's consideration of measures to correct the problems identified by the Joint 9–11 Inquiry.

As we address these important tasks, it will be essential that the Congress and the American public have the benefit of the best ideas available. We will welcome proposals by the administration, by other Members of Congress, from the National Commission on Terrorist Attacks Upon the United States, and concerned citizens.

Important ideas should not be bottled up anywhere. They should be put on the public table.

In that regard, I urge the President to release the intelligence reform recommendations that former National Security Adviser Brent Scowcroft has made to the administration. In public testimony before our Joint Inquiry in September 2002, General Scowcroft testified, in response to a question that I asked him, that in May 2001—before September 11, the President had established a process to review the intelligence community. General Scowcroft testified that he chaired the external panel of that review, but that he could not get into much detail because his report was still classified. It is time, I believe, finally to declassify that report to the extent possible. The Congress and the American public should have the benefit of that distinguished public servant's insights about intelligence community reform.

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

S. 1521. A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to introduce the Pahrump American Legion Post Land Conveyance Act. This Act will transfer approximately five acres of BLM land in Pahrump, NV, to the American Legion for the purpose of constructing a post home and other facilities that will benefit veterans' groups and the local community.

The American Legion and other nonprofit organizations that represent our Nation's veterans in the vicinity of Pahrump, NV, have tripled in size over the last 10 years. The local memberships of the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans will soon exceed 1000 members, and will continue to expand with the rest of the fast-growing local community.

The existing facility used by the veterans in Pahrump was built by the Veterans of Foreign Wars in the 1960s. It is much too small and not at all adequate for the veterans' current needs. The nearest facility that can accommodate them is located in Las Vegas, more than 60 miles away.

The Pahrump American Legion would like to build a post building, veterans' garden, and memorial park. These new facilities would benefit not only the local veterans, but would be made available—at no cost—for community activities. The American Legion has tried for over six years to acquire a suitable tract of land to provide a home for a new veterans center. The Legion started a pledge campaign and raised over $16,000 for the building fund before the parcel of land they sought to acquire was removed from consideration by the BLM. Unfortunately, other tracts of land that might represent alternative sites in Pahrump are not suitable.

Mr. President, this situation is intolerable. Without a home, the Pahrump American Legion Post can't offer the kind of services and programs that the veterans in the area deserve. Our veterans aren't the only ones who are suffering, either. All across the United States, the American Legion is deservedly famous for supporting community activities like the Boy Scouts and Girl Scouts, as well as the National Oratorical Contest, American Legion Baseball, Girls and Boys State, and other activities for young people. All of these worthy groups and projects would benefit from the construction of a new post home.

Our bill simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to American Legion ''Edward H McDaniel'' Post No. 22 in Pahrump. Because of the great public benefit such a facility will provide, we ask that the land be conveyed for free, but that the American Legion cover the costs of the transaction.

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. 1521

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 ''Edward H. McDaniel American Legion Post No. 22 Land Conveyance Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the membership of the American Legion and other nonprofit organizations that represent the veterans' community in Pahrump, Nevada, has grown immensely in the last 10 years;

(2) the existing facility used by the veterans community in Pahrump, which was constructed in the 1960's, is too small and is inappropriate for the needs of the veterans community;

(3) the nearest veterans facility that can accommodate the veterans community in Pahrump is located more than 60 miles away in the city of Las Vegas;

(4) the tracts of land that are available for consideration as potential sites for the location of a new veterans facility are not suitable for the facility;

(5) conveyance of a suitable parcel of land for the facility, which consists of an odd, triangular tract of land bounded on 2 sides by private land and cut off from other public land by a major highway, conforms with the objective of the Bureau of Land Management, Las Vegas District 1998 Resource Management Plan by simplifying the land management responsibilities of the Bureau of Land Management; and

(6) because the intent of the American Legion is to make the facility available to other veterans organizations and the public for community activities and events at no cost, it would be in the best interests of the United States to convey the land to the Edward H. McDaniel American Legion Post No. 22.

SEC. 3. DEFINITIONS.

In this Act:

(1) POST NO. 22.—The term ''Post No. 22'' means the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 4. CONVEYANCE OF LAND TO EDWARD H. MCDANIEL AMERICAN LEGION POST NO. 22.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 120 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c) and in accordance with the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.), the Secretary shall convey to Post No. 22, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (b) is the parcel of Bureau of Land Management land that—

(1) is bounded by Route 160, Bride Street, and Dandelion Road in Nye County, Nevada;

(2) consists of approximately 4.5 acres of land; and

(3) is more particularly described as a portion of the S ¼ of section 29, T. 20 S., R. 54 E., Mount Diablo and Base Meridian.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—Post No. 22 and any successors of Post No. 22 shall use the parcel of land described in section (b) for the construction and operation of a post building and memorial park for use by Post No. 22, other veterans groups, and the local community for events and activities.

(2) REVERSION.—Except as provided in paragraph (3), if the Secretary, after notice to Post No. 22 and an opportunity for a hearing, makes a finding that Post No. 22 has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1) and Post No. 22 fails to discontinue that use, title to the parcel shall revert to the United States, to be administered by the Secretary.

(3) WAIVER.—The Secretary may waive the requirements of paragraph (2) if the Secretary determines that a waiver would be in the best interests of the United States.

By Mr. SMITH (for himself, Mr. JEFFORDS, and Mr. CONRAD):

S. 1523. A bill to amend part A of title IV of the Social Security Act to allow a State to treat an individual with a disability, including a substance abuse problem, who is participating in rehabilitation services and who is increasing participation in core work activities as being engaged in work for purposes of the temporary assistance for needy families program, and to allow a State to court as a work activity under that program care provided to a child with a physical or mental impairment or an adult dependent for care with a physical or mental impairment; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Pathways to Independence Act of 2003, along with Senators CONRAD and JEFFORDS. This bill includes two important provisions that we will work to include in the TANF reauthorization. These provisions will help both TANF recipients with disabilities, and the States as they work with people with disabilities in their respective programs.

In July 2002, the General Accounting Office reported that as many as 44 percent of TANF families have a parent or a child with a physical or mental impairment. This is almost three times as high as among the non-TANF population in the United States. In eight percent of TANF families, there is both a parent and a child with a disability; among non-TANF families, this figure is one percent. The GAO's work confirmed the findings of earlier studies, including work by the Urban Institute and the HHS Inspector General.

These figures mean that we need to make sure that TANF reauthorization legislation give States the ability and incentives to help families meet their current needs, while also helping them to move from welfare to work. This is the lesson that Oregon and many other States have already learned as they developed and refined their TANF programs.

The first provision of my bill provides a pragmatic approach to helping parents with disabilities and substance abuse problems receive the treatment and other rehabilitative services they will need to succeed in a work setting. It is designed so that, over time, States can gradually increase the work activity requirements, while continuing to provide them with rehabilitative services. Under this proposal, much like in other proposals under consideration, a person participating in rehabilitation can be counted as engaged in work activity for three months. After the first three months, if a person continues to need rehabilitative services, the State can continue to count participation in those activities for another three months, so long as that person is engaged in some number of work hours, to be determined by the State.

The next step of my proposal builds on the concept of partial credit that is being considered in the Senate Finance Committee. If, after six months, a State determines that a person has a continuing need for rehabilitative services, the State may create a package that combines work activity with these services. The State will receive credit for the individual's efforts so long as at least one-half of the hours in which the individual participates are in core work activities. For example, if a State receives full credit for a person who works 30 hours per week, and the State has determined that an individual needs rehabilitative services beyond six months, that individual would need to be engaged in core work activities for at least 15 hours per week to get full credit, with the remaining 15 hours spent in rehabilitative services. Similarly, if partial credit is available for a person who works 24 hours per week, then a State could receive that same partial credit if the person was engaged in core work activities for at least 12 hours per week, with the remaining 12 hours spent in rehabilitative services.

This approach is appealing for many reasons. First, it allows States to design a system in which a person can move progressively over time from rehabilitation toward work. Second, it gives States credit for the time and effort they will need to invest to help people move successfully from welfare to work by allowing States to use a range of strategies to help these families. Third, it creates a more realistic structure for individuals with disabilities and addictions who may otherwise fall out of the system either through sanction or discouragement, despite their need for financial support. Finally, this approach is appealing because it is designed to work within the structure of the final TANF reauthorization bill.

The second provision in the bill would allow States the option of counting as work activity the time that an adult in a TANF family spends caring for a child with a disability or an adult relative who is in need of care. The studies reflect that these people often cannot find care for their relative so they can work. They are often forced into the impossible choice of caring for their child with a disability, or leaving that child to go to work in order to continue receiving their TANF grant. This is not a choice a parent should ever have to make.

In order to be able to count the care provided by the TANF recipient as work activity, the State would first be required to determine that the child or adult with a disability is, in fact, truly disabled, and that the person needs substantial ongoing care. Then, the State must decide that the TANF recipient is the most appropriate means for providing the needed care. The State would also have to conduct regular periodic evaluations to determine that the child or adult with a disability continues to need the care provided by the TANF recipient. Nothing in the provision prevents a State from determining that the TANF recipient can

work outside the home or engage in other work-related training or other activities that will help the person eventually move to work on a full- or part-time basis.

I would like to submit for the record a letter from close to forty national organizations that are members of the Consortium for Citizens with Disabilities supporting this legislation, as well as a letter of support from my home State of Oregon. I look forward to working with my co-sponsors, Senators CONRAD and JEFFORDS, and with the Chairman of the Finance Committee on these important provisions in the upcoming months, and I urge my colleagues to join us in support of this legislation.

I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

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

S. 1523

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 ''Pathways to Independence Act of 2003''.

SEC. 2. STATE OPTION TO COUNT REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS AS WORK FOR PURPOSES OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.

(a) IN GENERAL.—Section 407(c)(2) of the Social Security Act (42 U.S.C. 607(c)(2)) is amended by adding at the end the following:

''(E) STATE OPTION TO TREAT AN INDIVIDUAL WITH A DISABILITY, INCLUDING A SUBSTANCE ABUSE PROBLEM, WHO IS PARTICIPATING IN REHABILITATION SERVICES AS BEING ENGAGED IN WORK.—

''(i) INITIAL 3-MONTH PERIOD.—Subject to clauses (ii) and (iii), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), a State may deem an individual described in clause (iv) as being engaged in work for not more than 3 months in any 24-month period.

''(ii) ADDITIONAL 3-MONTH PERIOD.—A State may extend the 3-month period under clause (i) for an additional 3 months only if, during such additional 3-month period, the individual engages in a work activity described in subsection (d) for such number of hours per month as the State determines appropriate.

''(iii) SUCCEEDING MONTHS.—

''(I) CREDIT FOR INDIVIDUALS PARTICIPATING IN WORK ACTIVITIES AND REHABILITATION SERVICES.—If a State has deemed an individual described in clause (iv) as being engaged in work for 6 months in accordance with clauses (i) and (ii), and the State determines that the individual is unable to satisfy the work requirement under the State program funded under this part that applies to the individual without regard to this subparagraph because of the individual's disability, including a substance abuse problem, the State shall receive the credit determined under subclause (II) toward the monthly participation rate for the State.

''(II) DETERMINATION OF CREDIT.—For purposes of subclause (I), the credit the State shall receive under that subclause is, with respect to a month, the lesser of—

''(aa) the sum of the number of hours the individual participates in an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) for the month and the number of hours that the individual participates in rehabilitation services under this subparagraph for the month; or

''(bb) twice the number of hours the individual participates in an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) for the month.

''(iv) INDIVIDUAL DESCRIBED.—For purposes of this subparagraph, an individual described in this clause is an individual who the State has determined has a disability, including a substance abuse problem, and would benefit from participating in rehabilitative services.

''(v) DEFINITION OF DISABILITY.—In this subparagraph, the term 'disability' means—

''(I) a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

''(II) a physical or mental impairment that substantially limits 1 or more major life activities.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2003.

SEC. 3. STATE OPTION TO COUNT CARING FOR A CHILD OR ADULT DEPENDENT FOR CARE WITH A PHYSICAL OR MENTAL IMPAIRMENT AS MEETING ALL OR PART OF THE WORK REQUIREMENT.

(a) IN GENERAL.—Section 407(c)(2) of the Social Security Act (42 U.S.C. 607(c)(2)), as amended by section 2, is amended by adding at the end the following:

''(F) RECIPIENT CARING FOR A CHILD OR ADULT DEPENDENT FOR CARE WITH A PHYSICAL OR MENTAL IMPAIRMENT DEEMED TO BE MEETING ALL OR PART OF A FAMILY'S WORK PARTICIPATION REQUIREMENTS FOR A MONTH.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), a State may count the number of hours per week that a recipient engages in providing substantial ongoing care for a child or adult dependent for care with a physical or mental impairment if the State determines that—

''(I) the child or adult dependent for care has been verified through a medically acceptable clinical or laboratory diagnostic technique as having a significant physical or mental impairment or combination of impairments and as a result of that impairment, it is necessary that the child or adult dependent for care have substantial ongoing care;

''(II) the recipient providing such care is the most appropriate means, as determined by the State, by which the care can be provided to the child or adult dependent for care;

''(III) for each month in which this subparagraph applies to the recipient, the recipient is in compliance with the requirements of the recipient's self-sufficiency plan; and

''(IV) the recipient is unable to participate fully in work activities, after consideration of whether there are supports accessible and available to the family for the care of the child or adult dependent for care.

''(ii) TOTAL NUMBER OF HOURS LIMITED TO BEING COUNTED AS 1 FAMILY.—In no event may a family that includes a recipient to which clause (i) applies be counted as more than 1 family for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b).

''(iii) STATE REQUIREMENTS.—In the case of a recipient to which clause (i) applies, the State shall—

''(I) conduct regular, periodic evaluations of the recipient's family; and

''(II) include as part of the recipient's self-sufficiency plan, regular updates on what special needs of the child or the adult dependent for care, including substantial ongoing care, could be accommodated either by individuals other than the recipient or outside of the home.

''(iv) 2-PARENT FAMILIES.—

''(I) IN GENERAL.—If a parent in a 2-parent family is caring for a child or adult dependent for care with a physical or mental impairment—

''(aa) the State may treat the family as a 1-parent family for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b); and

''(bb) the State may not count any hours of care for the child or adult dependent for care for purposes of determining such rates.

''(II) SPECIAL RULE.—If the adult dependent for care in a 2-parent family is 1 of the parents and the State has complied with the requirements of clause (iii), the State may count the number of hours per week that a recipient engages in providing substantial ongoing care for that adult dependent for care.

''(v) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed as prohibiting a State from including in a recipient's self-sufficiency plan a requirement to engage in work activities described in subsection (d).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2003.

CONSORTIUM FOR CITIZENS WITH DISABILITIES,
July 31, 2003.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.
Hon. JAMES M. JEFFORDS,
U.S. Senate,
Washington, DC.
Hon. KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH, CONRAD AND JEFFORDS: We are writing to thank you for introducing legislation that addresses two key problems facing TANF families with a parent or child with a disability. We believe that these provisions, if included in a larger TANF reauthorization bill, will significantly improve the ability of states to help families successfully move from welfare toward work while also ensuring that the needs of family members with disabilities are met. We enthusiastically support this legislation.

The Consortium for Citizens with Disabilities (CCD) is a coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, DC. We work together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD TANF Task Force seeks to ensure that families that include persons with disabilities are afforded equal opportunities and appropriate accommodations under the Temporary Assistance for Needy Families (TANF) block grant.

The research is clear that many TANF families include a parent or a child with a disability, and in some families, there is both a child and a parent with a disability. The numbers are high—GAO has found that as many as 44 percent of TANF families have a child or a parent with a disability—and need to be addressed in the policy choices that Congress makes in TANF reauthorization. We believe that, by designing policies that take into account the needs of families with a member with a disability, Congress can help the states move greater numbers of these families off of welfare and toward greater independence. Without reasonable

supports, however, and through no fault of their own, these families sometimes fail at work activity and are often subject to inappropriate sanctioning and the crises that flow from abrupt—and often prolonged—loss of income.

Your bill could provide low-income families with members with disabilities real opportunities to achieve self-sufficiency in two significant ways, if included in larger TANF reauthorization legislation:

Allow states to count individuals participating in rehabilitative services beyond three months, while the individual progressively engages in work activity.

Under current law, states have the flexibility—either through a waiver such as Oregon has or as a result of the caseload reduction credit—to ensure that a parent with a disability, including a substance abuse problem, receives the rehabilitative services she needs in order to move towards work. In recent years, increasing numbers of states have used this flexibility as they realized that some parents would need more specialized help if they were going to successfully leave TANF. Some of the current reauthorization proposals, however,—including the House-passed bill, H.R. 4—limit states to counting three months of rehabilitative services as work activity. An arbitrary limit of three months of rehabilitation services would be inadequate to help many families with members with disabilities find and sustain employment, and, in light of proposed increases in state participation rates, would discourage states from designing programs and requirements that work for people with the most severe barriers.

Your bill will allow states to count rehabilitative services as work activity beyond three months as long as the rehabilitative services are mixed with work activity. We believe this mix of activities and supports will help an individual with severe barriers move toward greater independence. First, the provision would extend the period of time during which rehabilitative services, including substance abuse treatment, can count toward the work participation requirements from three months to six months. However, during the second three months, the state would require a small amount of work activity in addition to rehabilitative services. Further, the provision would allow states to count individuals participating in rehabilitative services after this six month period as long as at least one-half of the hours in which the individual participates are in core work activities. This will allow states to create a progression of work activity hours combined with rehabilitative services over time that will assist in moving the family from welfare to work at a pace that is designed to lead to success for that family.

CCD is not asking Congress to exempt individuals, or family members, with disabilities from participation in the TANF program. On the contrary, we are looking for the essential assistance and supports that will help families move off of welfare toward greater independence. Your bill does not create any exemptions from participation requirements, and in fact, provides the necessary assistance and supports that can come with participation in the TANF program. Under the bill, states would have to engage the same number of recipients in welfare-to-work activities as under the standard set in a new reauthorization law. The provision simply allows states to utilize a broader range of activities to help recipients with barriers move to work. In short, this is a way to make the TANF program work for parents with disabilities and substance abuse problems. The provision would give states credit when recipients with barriers are engaged in activities and, thus, will encourage states to assist families with barriers to progress toward work in a manner and at a pace that is more tailored to their needs and disabilities.

Allow states to count as work activity the time that the adult in the TANF family spends caring for a child with a disability or an adult relative with a disability.

It is very difficult to find safe, accessible, and appropriate child care for a child with a disability. This is often the case regardless of the family's income. In addition, the nature of some children's disabilities and health conditions means that parents are called from work regularly to assist a school with the child or to take the child to medical appointments. At the same time, many parents would like to work as much as possible or receive the training they will need to secure a good job when they are no longer needed in the home to care for their children with disabilities.

Your bill will allow states to receive work credit for the time that a parent spends caring for a child with a disability, if the state has determined that this is the best way to secure the child's care. The provision also would apply to providing care for an adult relative with a disability. This would help to address the bind that some TANF recipients face when they are told they must work away from home, but leave an elderly parent or other relative with a disability without the care they need to continue to live in the community. Nothing in the provision would prevent a state from designing a plan with the parent that combines some amount of in-home care as work activity with other activities that will help the parent prepare to enter the workforce at a time that is appropriate in meeting the needs of the child or adult relative with a disability.

Thank you again for introducing this legislation and your leadership on these very important issues. We look forward to working with you and your staffs to ensure that these provisions become law.

Sincerely,

American Association of People with Disabilities, American Association on Mental Retardation, American Congress of Community Supports and Employment Services, American Counseling Association, American Music Therapy Association, American Network of Community Options And Resources, Association of Maternal and Child Health Programs, Association of University Centers on Disability, Bazelon Center for Mental Health Law, Community Legal Services, Council for Exceptional Children, Council for Learning Disabilities, Council of State Administrators of Vocational Rehabilitation, Disability Service Providers of America, Division for Early Childhood of the Council for Exceptional Children, Easter Seals, Epilepsy Foundation, Goodwill Industries International,

Helen Keller National Center, Learning Disabilities Association, National Alliance to End Homelessness, National Association of County Behavioral Health Directors, National Association of Protection and Advocacy Systems, National Association of Social Workers, National Association of State Directors of Special Education, National Association of State Mental Health Program Directors, National Coalition of Parent Center, National Coalition on Deaf-Blindness, National Council for Community Behavioral Healthcare, National Mental Health Association, National Rehabilitation Association, National Organization of Social Security Claimants' Representatives, PACER Center, Spina Bifida Association of America, TASH, The Arc of the United States, United Cerebral Palsy.

OREGON LAW CENTER,
Portland, OR, July 31, 2003.

Hon. GORDON SMITH,
U.S. Senate, Washington, DC.
Hon. JAMES M. JEFFORDS,
U.S. Senate, Washington, DC.
Hon. KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATORS SMITH, CONRAD AND JEFFORDS: I am writing on behalf of the clients of the Oregon Law Center to express our enthusiastic support for the Work and Treatment Act of 2003 which you are sponsoring. The Oregon Law Center is a nonprofit law firm with offices throughout Oregon, that advocates on behalf of low income families on a variety of issues including the Temporary Assistance to Needy Families program. The Work and Treatment Act addresses a critical shortcoming in the current TANF law: that is, the failure to address the needs of recipients with disabilities.

Oregon's TANF waiver, which expired on July 1, 2003, allowed the state to address the treatment needs of adults and children with disabilities in the family's self-sufficiency plan. Oregon found, as has substantial national research, that the TANF population contains a high percentage of families who are unemployed or underemployed due to the disability of the head of the household, or due to the need to provide care to household dependents with disabilities. This bill would allow Oregon to continue its work with these families to help them achieve their highest levels of self-sufficiency.

Thanks to all of you and particularly to Senator Smith who has demonstrated great leadership in the TANF debates and great understanding of the desperate needs of low income families in Oregon.

Respectfully submitted,

LOREY H. FREEMAN,
Attorney at Law.

Mr. JEFFORDS. Mr. President, it is a pleasure for me to introduce today, along with my colleagues Senator SMITH of Oregon and Senator CONRAD of North Dakota, the Pathways to Independence Act of 2003.

Let me begin by describing why this legislation is necessary. Currently, States have to meet a certain level of work participation in order to avoid penalties against their welfare funding. This level of work participation can be lowered through the ''caseload reduction credit.'' This means that States receive credit for moving people off of their welfare caseload. The caseload reduction credit has proven to be very successful since welfare reform was enacted in 1996. In fact, most States have received so much credit for moving people off of their caseloads, that their effective work participation rate is 0 percent.

While this approach has been widely regarded as very successful, it has one major flaw. States are rewarded only for removing people from welfare, there is no consideration given to where those people end up. States get the same credit for training someone to be a nurse, electrician, or carpenter as they do for sending that person to live on the streets.

This perverse incentive has been particularly difficult for the many welfare recipients who suffer from a disability or struggle with a substance abuse problem. In many States it is easier to write these people off than to give

them the support necessary to become truly independent.

In Vermont, approximately 15 percent of the welfare caseload is diagnosed with a disability and receives services through the Department of Vocational Rehabilitation. However, that treatment is not included in the ''core activities'' allowed under welfare reform. So the State receives no credit for moving these individuals to independence. This is wrong.

If we truly want welfare to be an initiative that helps people to become independent and self-sufficient, then we must be willing to take the steps necessary to get them there. This legislation would give States the tools necessary to assist them in that effort.

Here is how it would work. The bill will allow States to count people with disabilities or substance abuse problems as working, provided that they are meeting certain criteria. First, a State can count someone as working for three months if they are involved in a treatment program. At the end of this three month period, the State can re-evaluate the status of the individual and decide to continue treatment for another 3 months. Now, the individual must be engaged in work or work-preparation activities in addition to their continuing treatment program. At the end of 6 months, the State can continue treatment with the individual as long as the individual is meeting half of the regular work requirement and following their treatment program for the remaining hours.

This is a common sense proposal. It is consistent with what we know about providing effective support programs to people with disabilities and effective treatment programs for people struggling with substance abuse. Allowing States to count these people in the ''working'' category provides the States with the necessary incentives to engage their welfare recipients in meaningful interventions. It will allow the States to truly place people with disabilities and substance abuse problems on a pathway to independence.

In addition, this bill includes a provision first put forward by Senator CONRAD that will allow States to exempt people who need to care for a child or family member with a disability. This is a proposal that was part of last year's Senate Finance Committee Work, Opportunity and Responsibility for Kids (WORK) bill, and I applaud Senator CONRAD for his consistent support of that proposal.

It is unclear when a full reauthorization of welfare will occur. It is clear however, that The Pathways to Independence Act of 2003 should be a part of any welfare reform package. I would like to thank the Consortium for Citizens with Disabilities for their help in developing this legislation and their strong letter in support. I especially want to thank my colleague from Oregon, Senator SMITH, and my colleague from North Dakota, Senator CONRAD and their staff for all of the hard work that has gone into producing this proposal.

By Mr. SANTORUM (for himself, Mr. ALLEN, Mr. BUNNING, Mrs. DOLE, and Mr. KYL):

S. 1524. A bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes; to the Committee on Finance.

Mr. SANTORUM. Mr. President, today I am introducing the Motorsports Facilities Fairness Act. This bill would clarify the tax treatment of a large and growing industry that contributes to the economies of communities across the country.

The Motorsports Facilities Fairness Act would provide certainty to track and speedway operators regarding the depreciation of their properties. The Internal Revenue Service has just recently raised questions regarding the depreciation treatment used by facility owners. For decades, motorsports facilities were classified as ''theme and amusement facilities'' for depreciation. This long-standing treatment was widely applied and accepted, until now. Over the years, relying on this understanding of the tax law, facility owners and operators invested hundreds of millions of dollars in building and upgrading these properties.

Pennsylvania is home to many of these facilities, including Pocono Raceway, Nazareth Speedway, Lake Erie Speedway, Jennertown Speedway, Big Diamond Raceway and Motordrome Speedway. These tracks and others boost their local economies. Larger races can draw tens of thousands of fans, some from hundreds of miles away. These facilities are an important part of the fabric of our national economy. As motorsports continues to grow as a national pastime, we must ensure that Federal policy does not unnecessarily impede its contribution to the economy.

To that end I have introduced the Motorsports Facilities Fairness Act. This legislation would simply codify the well-understood, long-standing and widely-accepted treatment of motorsports facilities for depreciation purposes. While modest in scope, it will provide needed clarity to the hundreds of tracks throughout the United States.

I urge my colleagues to join me in supporting the Motorsports Facilities Fairness Act.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1526. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of Indian tribal governments as State governments for purposes of issuing tax-exempt governmental bonds, and for other purposes; to the Committee on Finance.

Mr. CAMPBELL. Mr. President, I am pleased to be join by Senator INOUYE in introducing the Tribal Government Tax Exempt Bond Fairness Act of 2003.

This bill will assist Indian tribes raise capital in the private markets for purposes of job creation and economic development. The bill complements the other economic development initiative I am introducing today to discipline Federal programs aimed to help tribes strengthen their economies.

While making modest adjustments in current law, this bill will have far-reaching and positive effects for tribal governments and their members around the Nation.

The fact is that like State governments, tribal governments are responsible for a host of services not only to their members but to non-members who live on or hear their lands. These services include fire, police and ambulance service, road and bridge maintenance, and a host of social services.

Unlike State governments, however, tribal governments face severe restrictions in their ability to finance development through debt instruments.

The law forbids tribes from issuing tax-exempt bonds for any project unless it can meet the so-called ''essential government function'' test.

That is, in order for the holder of a tribal bond issue to receive income from that bond exempt from Federal tax, it must be issued for activities that are ''governmental'' in nature.

Examples of the kinds of projects that have been ruled by the Internal Revenue Service as falling outside this test are tribal convention centers, hotels, and golf courses.

State governments are not limited by the ''essential government function'' test when they issue tax-exempt debt. The bill I am introducing today will eliminate the disparate treatment tribes now receive.

Armed with this bonding authority, tribal governments will strengthen their economies, provide for their members and others, and lessen their reliance on Federal programs and services.

These are all worthy goals and I urge my colleagues to join me in supporting this bill.

I ask unanimous consent that a copy 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. 1526

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 maybe cited as the ''Tribal Government Tax-Exempt Bond Fairness Act of 2003''.

SEC. 2. DECLARATIONS AND AFFIRMATIONS.

Congress declares and affirms that—

(1) The United States Constitution, United States Federal court decisions, and United States statutes recognize that Indian tribes are governments, retaining sovereign authority over their lands.

(2) Through treaties, statutes, and Executive orders, the United States set aside Indian reservations to be used as ''permanent homelands'' for Indian tribes.

(3) As governments, Indian tribes have the responsibility and authority to provide governmental services, develop tribal economies, and build community infrastructure to

ensure that Indian reservation lands serve as livable ''permanent homelands''.

(4) Congress is vested with the authority to regulate commerce with Indian tribes, and hereby exercises that authority and affirms the United States government-to-government relationship with Indian tribes.

SEC. 3. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) IN GENERAL.—Subsection (c) of section 7871 of the Internal Revenue Code of 1986 (relating to Indian tribal governments treated as States for certain purposes) is amended to read as follows:

''(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if—

''(A) such obligation is part of an issue 95 percent or more of the net proceeds of which are to be used to finance any facility located on an Indian reservation, or

''(B) such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

''(2) EXCLUSION OF GAMING.—An obligation described in subparagraph (A) or (B) of paragraph (1) may not be used to finance any portion of a building in which class II or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2702)) is conducted or housed.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(B) INDIAN RESERVATION.—The term 'Indian reservation' means—

''(i) a reservation, as defined in section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and

''(ii) lands held under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by a Native corporation as defined in section 3(m) of such Act (43 U.S.C. 1602(m)).''.

SEC. 4. EXEMPTION FROM REGISTRATION REQUIREMENTS.

The first sentence of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by inserting ''or by any Indian tribal government or subdivision thereof (within the meaning of section 7871 of the Internal Revenue Code of 1986),'' after ''or Territories,''.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to obligations issued after the date of the enactment of this Act.

By Mr. SANTORUM (for himself, Mr. DODD, Mr. CHAFEE, Ms. COLLINS, Mr. KERRY, Mr. SCHUMER, Mr. REED, and Mr. LIEBERMAN):

S. 1527. A bill to establish a Tick-Borne Disorders Advisory Committee, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I am proud to join my colleague, Senator CHRIS DODD of Connecticut, in reintroducing bipartisan legislation to address the ruinous effects of America's most common tick-borne illness, Lyme disease.

I thank the senior Senator from Connecticut for his long involvement and leadership on this very important public health issue. With thousands of Americans contracting Lyme disease each year, it is essential that we work aggressively to wage a comprehensive fight against Lyme and other tick-borne disorders, which cost our country dearly in the way of medical expenditures and human suffering. The current lack of physician knowledge about Lyme and the inadequacies of existing detection methods stand out as deficiencies in our efforts to combat Lyme, and only serve to compound this growing public health hazard.

We have it within our capacity to finally deliver on promises made to Lyme patients and their families to better focus the federal government's efforts to detect and research a cure for Lyme. Toward the end of the last session of Congress, the Senate passed this legislation, but unfortunately the House of Representatives did not have the opportunity to consider it.

This legislation represents years of work with the Lyme advocacy community to reach consensus how we can best move forward on this issue. The goal of our bill is for the federal government to develop more accurate and more reliable diagnostic tools, and to provide access to more effective treatment and ultimately a cure.

Between 1991 and 1999, the annual number of reported cases of Lyme disease increased by an astonishing 72 percent. Even as this dramatic increase took place, poor coordination and the lack of proper funding have left too many questions unanswered.

This legislation will seek to set a new course for our public health strategies toward Lyme by ensuring that the proper collaboration is taking place between the Federal government and the people it serves.

With this consensus legislation we are calling for the formation of a Department of Health and Human Services Advisory Committee that will bring Federal agencies, such as the CDC and the NIH, to the table with patient organizations, clinicians, and members of the scientific community. This Committee will report its recommendations to the Secretary of HHS. It will ensure that all scientific viewpoints are given consideration at NIH and the CDC, and will give a voice to the patient community which has often been left out of the dialogue.

Our legislation will also provide an additional $10 million each year over the next five years for public health agencies to work with researchers around the country to develop better diagnostic tests and to increase their efforts to educate the public about Lyme disease.

I sincerely hope that our colleagues will join Senator DODD and myself in this most worthy cause and cosponsor this important bill. Lyme disease patients and their families have waited too long for a responsive plan of action to address their suffering and needs.

The tremendous efforts of the Lyme patient and advocacy community have been very helpful in raising awareness and mobilizing support for this issue, and for this both Senator DODD and I thank them. I look forward to working with them, Senator DODD, and our colleagues to enact into law strong legislation to help correct the mistakes of the past, and to give greater hope for the future by ensuring patients that the federal government is doing everything in its power to provide better treatments and ultimately a cure.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1527

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

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) Lyme disease is a common but frequently misunderstood illness that, if not caught early and treated properly, can cause serious health problems.

(2) Lyme disease is a bacterial infection that is transmitted by a tick bite. Early signs of infection may include a rash and flu-like symptoms such as fever, muscle aches, headaches, and fatigue.

(3) Although Lyme disease can be treated with antibiotics if caught early, the disease often goes undetected because it mimics other illnesses or may be misdiagnosed. Untreated, Lyme disease can lead to severe heart, neurological, eye, and joint problems because the bacteria can affect many different organs and organ systems.

(4) If an individual with Lyme disease does not receive treatment, such individual can develop severe heart, neurological, eye, and joint problems.

(5) Although Lyme disease accounts for 90 percent of all vector-borne infections in the United States, the ticks that spread Lyme disease also spread other disorders, such as ehrlichiosis, babesiosis, and other strains of Borrelia. All of these diseases in 1 patient makes diagnosis and treatment more difficult.

(6) Although tick-borne disease cases have been reported in 49 States and the District of Columbia, about 90 percent of the 15,000 cases have been reported in the following 10 States: Connecticut, Pennsylvania, New York, New Jersey, Rhode Island, Maryland, Massachusetts, Minnesota, Delaware, and Wisconsin. Studies have shown that the actual number of tick-borne disease cases are approximately 10 times the amount reported due to poor surveillance of the disease.

(7) Persistence of symptomatology in many patients without reliable testing makes treatment of patients more difficult.

SEC. 2. ESTABLISHMENT OF A TICK-BORNE DISORDERS ADVISORY COMMITTEE.

(a) ESTABLISHMENT OF COMMITTEE.—Not later than 180 days after the date of enactment of this Act, there shall be established an advisory committee to be known as the Tick-Borne Disorders Advisory Committee (referred to in this Act as the ''Committee'') organized in the Office of the Secretary.

(b) DUTIES.—The Committee shall advise the Secretary and Assistant Secretary of Health regarding how to—

(1) assure interagency coordination and communication and minimize overlap regarding efforts to address tick-borne disorders;

(2) identify opportunities to coordinate efforts with other Federal agencies and private organizations addressing tick-borne disorders; and

(3) develop informed responses to constituency groups regarding the Department of Health and Human Services' efforts and progress.

(c) MEMBERSHIP.—

(1) APPOINTED MEMBERS.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall appoint voting members to the Committee from among the following member groups:

(i) Scientific community members.

(ii) Representatives of tick-borne disorder voluntary organizations.

(iii) Health care providers.

(iv) Patient representatives who are individuals who have been diagnosed with tick-borne illnesses or who have had an immediate family member diagnosed with such illness.

(v) Representatives of State and local health departments and national organizations who represent State and local health professionals.

(B) REQUIREMENT.—The Secretary shall ensure that an equal number of individuals are appointed to the Committee from each of the member groups described in clauses (i) through (v) of subparagraph (A).

(2) EX OFFICIO MEMBERS.—The Committee shall have nonvoting ex officio members determined appropriate by the Secretary.

(d) CO-CHAIRPERSONS.—The Assistant Secretary of Health shall serve as the co-chairperson of the Committee with a public co-chairperson chosen by the members described under subsection (c). The public co-chairperson shall serve a 2-year term and retain all voting rights.

(e) TERM OF APPOINTMENT.—All members shall be appointed to serve on the Committee for 4 year terms.

(f) VACANCY.—If there is a vacancy on the Committee, such position shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of that term. Members may serve after the expiration of their terms until their successors have taken office.

(g) MEETINGS.—The Committee shall hold public meetings, except as otherwise determined by the Secretary, giving notice to the public of such, and meet at least twice a year with additional meetings subject to the call of the co-chairpersons. Agenda items can be added at the request of the Committee members, as well as the co-chairpersons. Meetings shall be conducted, and records of the proceedings kept as required by applicable laws and Departmental regulations.

(h) REPORTS.—

(1) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out under this Act.

(2) CONTENT.—Such reports shall describe—

(A) progress in the development of accurate diagnostic tools that are more useful in the clinical setting; and

(B) the promotion of public awareness and physician education initiatives to improve the knowledge of health care providers and the public regarding clinical and surveillance practices for Lyme disease and other tick-borne disorders.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act, $250,000 for each of fiscal years 2004 and 2005. Amounts appropriated under this subsection shall be used for the expenses and per diem costs incurred by the Committee under this section in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), except that no voting member of the Committee shall be a permanent salaried employee.

SEC. 3. AUTHORIZATION FOR RESEARCH FUNDING.

There are authorized to be appropriated $10,000,000 for each of fiscal years 2004 through 2008 to provide for research and educational activities concerning Lyme disease and other tick-borne disorders, and to carry out efforts to prevent Lyme disease and other tick-borne disorders.

SEC. 4. GOALS.

It is the sense of the Senate that, in carrying out this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary''), acting as appropriate in consultation with the Director of the Centers for Disease Control and Prevention, the Director of the National Institutes of Health, the Committee, and other agencies, should consider carrying out the following:

(1) FIVE-YEAR PLAN.—It is the sense of the Senate that the Secretary should consider the establishment of a plan that, for the five fiscal years following the date of the enactment of this Act, provides for the activities to be carried out during such fiscal years toward achieving the goals under paragraphs (2) through (4). The plan should, as appropriate to such goals, provide for the coordination of programs and activities regarding Lyme disease and other tick-borne disorders that are conducted or supported by the Federal Government.

(2) FIRST GOAL: DIAGNOSTIC TEST.—The goal described in this paragraph is to develop a diagnostic test for Lyme disease and other tick-borne disorders for use in clinical testing.

(3) SECOND GOAL: SURVEILLANCE AND REPORTING OF LYME DISEASE AND OTHER TICK-BORNE DISORDERS.—The goal described in this paragraph is to accurately determine the prevalence of Lyme disease and other tick-borne disorders in the United States.

(4) THIRD GOAL: PREVENTION OF LYME DISEASE AND OTHER TICK-BORNE DISORDERS.—The goal described in this paragraph is to develop the capabilities at the Department of Health and Human Services to design and implement improved strategies for the prevention and control of Lyme disease and other tick-borne diseases. Such diseases may include Masters' disease, ehrlichiosis, babesiosis, other bacterial, viral and rickettsial diseases such as tularemia, tick-borne encephalitis, Rocky Mountain Spotted Fever, and bartonella, respectively.

Mr. DODD. Mr. President, it is with great pleasure that I rise today to introduce legislation for the research, prevention, and treatment of Lyme disease. This bipartisan legislation works toward the goal of eradicating Lyme disease—a devastating disease that has particularly impacted those of us from Connecticut and the Northeast. The Senate showed its strong support for this legislation when it passed it in the last Congress by Unanimous Consent. It is my hope that the Senate will show this same support again to ensure the goals of this legislation are achieved.

Lyme disease can be devastating to those it affects. The disease first achieved prominence in the 1980s in the state of Connecticut and got its name from the town of Lyme, CT. Today, Connecticut residents have the unfortunate distinction of being 10 times more likely to contract Lyme disease than the rest of the nation. However, the incidence of Lyme disease nationwide is on the rise. In fact, cases of Lyme disease have been reported by 49 states and the District of Columbia. Since 1982, the number of Lyme disease cases reported to health officials has exceeded 200,000. Even more disconcerting are reports indicating that the actual incidence of Lyme disease may be significantly greater than what is reported.

Those infected with Lyme disease may experience a number of health problems including facial paralysis, joint swelling, loss of coordination, irregular heartbeat, liver malfunction, depression, and memory loss. Unfortunately, this devastating disease can often be misdiagnosed, due to the fact that the symptoms presented by Lyme disease often look similar to other conditions. The misdiagnosis of this often debilitating illness can result in prolonged pain and suffering, unnecessary tests, expensive treatments, as well as severe emotional consequences for victims and their families.

The legislation we introduce today will build on earlier efforts to tackle the problem of Lyme disease and other tick-borne disorders. Through an amendment that I offered to the Fiscal Year 1999 Department of Defense (DoD) appropriations bill, an additional $3 million was directed toward DoD's research in this area. This was an important first step in the fight to increase our understanding of this disease, but much more remains to be done. This legislation will provide what is necessary to continue the effort to research, prevent and treat Lyme disease and other tick-borne disorders.

A critical component of this legislation is the creation of a federal advisory committee on Lyme disease and other tick-borne disorders. This advisory committee, the first of its kind, will include members of the scientific community, health care providers, and most directly impacted by the disease, Lyme patients and their families. Among its activities, the committee will identify opportunities for coordination and communication between Federal agencies and private organizations in their efforts to combat Lyme disease.

This legislation also includes other key elements designed to conquer Lyme disease and other tick-borne disorders. It provides a framework for the government to establish clear goals in the areas of research, treatment, and prevention of Lyme disease. Crucial to activities in each of these areas, is the fact that this legislation authorizes $10 million in annual funding for federal activities related to the elimination of Lyme disease.

I would like to thank my colleague from Pennsylvania, Senator RICK SANTORUM, the legislation's chief Republican cosponsor, for his dedicated

support of this important initiative. I look forward to continuing to work with Senator SANTORUM, my other colleagues, and the Lyme disease community to strengthen our efforts to eradicate Lyme disease. This legislation provides an important step toward reaching this laudable goal.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1528. A bill to establish a procedure to authorize the integration and coordination of Federal funding dedicated to the community, business, and economic development of Native American communities; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, I am pleased to be joined by Senator INOUYE in introducing a bill to assist Indian tribes in their efforts to strengthen their economies.

Despite recent success some Indian tribes have had with gaming, tourism and natural resource development, the fact is that most tribes still suffer high unemployment, intense poverty and a lack of physical infrastructure.

Most tribal economies continue to perform poorly despite the expenditure of hundreds of millions—even billions—of Federal dollars over the years by the Departments of Agriculture, Commerce, Defense, Interior, Labor, and others.

The core problem is not the amount of dollars, but rather how they are being spent.

Numerous hearings by the Committee on Indian Affairs and several General Accounting Office (GAO) reports show that most Federal efforts are poorly timed and coordinated and lack the kind of tribal decision-making to make the efforts succeed.

The bill we are introducing today will go a long way in fixing these problems.

The principles that guide the bill are not new. In 1970 President Nixon issued his ''Special Message to Congress on Indian Affairs'' that called for significant changes in Federal Indian policy.

Nixon saw that Indians were not in command of the Federal programs and services meant for their benefit and he launched a quiet revolution in Federal Indian policy.

The Indian Self-Determination and Education Assistance Act of 1975 authorizes Indian tribes and tribal consortia to ''step into the shoes'' of the Federal government to administer programs and services historically provided by the United States.

Currently, one-half of the programs and services of the Bureau of Indian Affairs and the Indian Health Service are now contracted by Indian tribes and consortia. Tribal decisionmaking is paramount, service quality has improved, and tribal capacity has been enhanced significantly.

This bill will expand the principles of Indian self-determination to have the tribes—not the Federal bureaucracy—determine which programs and services should be brought to bear in an integrated and coordinated way to bring hope, jobs, and strengthened economies to their communities.

I ask unanimous consent that a copy 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. 1528

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

SECTION 1. TITLE.

The Act may be cited as the ''Indian Tribal Development Consolidated Funding Act of 2003''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) a unique legal and political relationship exists between the United States and Indian tribes that is reflected in article I, section 8, clause 3 of the Constitution, various treaties, Federal statutes, Supreme Court decisions, executive agreements, and course of dealing;

(2) despite the infusion of a substantial amount of Federal funds into Native American communities over several decades, the majority of Native Americans remain mired in poverty, unemployment, and despair;

(3) the efforts of the United States to foster community, economic, and business development in Native American communities have been hampered by fragmentation of authority, responsibility, and performance, and lack of timeliness and coordination in resources and decisionmaking; and

(4) the effectiveness of Federal and tribal efforts in generating employment opportunities and bringing value-added activities and economic growth to Native American communities depends on cooperative arrangements among the various Federal agencies and Indian tribes.

(b) PURPOSES.—The purposes of this Act are—

(1) to enable Indian tribes and tribal organizations to use available Federal assistance more effectively and efficiently;

(2) to adapt and target such assistance more readily to particular needs through wider use of projects that are supported by more than 1 agency, assistance program, or appropriation of the Federal Government;

(3) to encourage Federal-tribal arrangements under which Indian tribes and tribal organizations may more effectively and efficiently combine Federal and tribal resources to support economic development projects;

(4) to promote the coordination of Native American economic programs to maximize the benefits of those programs to encourage a more consolidated, national policy for economic development; and

(5) to establish a procedure to aid Indian tribes in obtaining Federal resources and in more efficiently administering those resources for the furtherance of tribal self-governance and self-determination.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICANT.—The term ''applicant'' means an Indian tribe or tribal organization, or a consortium of Indian tribes or tribal organizations, that submits an application under this Act for assistance in carrying out a project.

(2) ASSISTANCE.—The term ''assistance'' means the transfer of anything of value for a public purpose, support, or stimulation that is—

(A) authorized by a law of the United States;

(B) provided by the Federal Government through grant or contractual arrangements (including technical assistance programs providing assistance by loan, loan guarantee, or insurance); and

(C) authorized to include an Indian tribe or tribal organization, or a consortium of Indian tribes or tribal organizations, as eligible for receipt of funds under a statutory or administrative formula for the purposes of community, economic, or business development.

(3) ASSISTANCE PROGRAM.—The term ''assistance program'' means any program of the Federal Government that provides assistance for which Indian tribes or tribal organizations are eligible.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PROJECT.—

(A) IN GENERAL.—The term ''project'' means a community, economic, or business development undertaking that includes components that contribute materially to carrying out a purpose or closely-related purposes that are proposed or approved for assistance under more than 1 Federal Government program.

(B) INCLUSION.—The term ''project'' includes a project designed to improve the environment, a housing facility, a community facility, a business or industrial facility, or transportation, a road, or a highway, with respect to an Indian tribe, tribal organization, or consortium.

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

(7) TRIBAL ORGANIZATION.—The term ''tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. LEAD AGENCY.

The Department of the Interior shall be the lead agency for purposes of carrying out this Act.

SEC. 5. SELECTION OF PARTICIPATING TRIBES.

(a) PARTICIPANTS.—

(1) IN GENERAL.—The Secretary may select from the applicant pool described in subsection (b) Indian tribes or tribal organizations, not to exceed 24 in each fiscal year, to submit an application to carry out a project under this Act.

(2) CONSORTIA.—Two or more Indian tribes or tribal organizations that are otherwise eligible to participate in a program or activity to which this Act applies may form a consortium to participate as an applicant under paragraph (1).

(b) APPLICANT POOL.—The applicant pool described in this subsection shall consist of each Indian tribe or tribal organization that—

(1) successfully completes the planning phase described in subsection (c);

(2) requests participation in a project under this Act through a resolution or other official action of the tribal governing body; and

(3) demonstrates, for the 3 fiscal years immediately preceding the fiscal year for which participation is requested, financial stability and financial management capability as demonstrated by a showing by the Indian tribe or tribal organization that there were no material audit exceptions in the required annual audit of the self-determination contracts of the Indian tribe or tribal organization.

(c) PLANNING PHASE.—Each applicant—

(1) shall complete a planning phase that includes—

(A) legal and budgetary research; and

(B) internal tribal government and organizational preparation; and

(2) on completion of the planning phase, shall be eligible for joint assistance with respect to a project.

SEC. 6. APPLICATION REQUIREMENTS, REVIEW, AND APPROVAL.

(a) REQUIREMENTS.—An applicant shall submit to the head of the Federal agency responsible for administering the primary Federal program to be affected by the project an application that—

(1) identifies the programs to be integrated;

(2) proposes programs that are consistent with the purposes described in section 2(b);

(3) describes—

(A) a comprehensive strategy that identifies the manner in which Federal funds are to be integrated and delivered under the project; and

(B) the results expected from the project;

(4) identifies the projected expenditures under the project in a single budget;

(5) identifies the agency or agencies of the tribal government that are to be involved in the project;

(6) identifies any Federal statutory provisions, regulations, policies, or procedures that the applicant requests be waived in order to implement the project; and

(7) is approved by the governing body of the applicant, including, in the case of an applicant that is a consortium or tribes or tribal organizations, the governing body of each affected member tribe or tribal organization.

(b) REVIEW.—On receipt of an application that meets the requirements of subsection (a), the head of the Federal agency receiving the application shall—

(1) consult with the applicant and with the head of each Federal agency that is proposed to provide funds to implement the project; and

(2) consult and coordinate with the Department of the Interior as the lead agency under this Act for the purposes of processing the application.

(c) APPROVAL.—

(1) WAIVERS.—

(A) IN GENERAL.—Subject to subparagraph (B), notwithstanding any other provision of law, the head of the Federal agency responsible for administering any statutory provision, regulation, policy, or procedure that is identified in an application in accordance with subsection (a)(6) or as a result of the consultation required under subsection (b), and that is requested by the applicant to be waived, shall waive the statutory provision, regulation, policy, or procedure.

(B) LIMITATION.—A statutory provision, regulation, policy, or procedure identified for waiver under subparagraph (A) may not be waived by an agency head if the agency head determines that a waiver would be inconsistent with—

(i) the purposes described in section 2(b); or

(ii) any provision of the statute governing the program involved that is specifically applicable to Indian programs.

(2) PROJECT.—

(A) IN GENERAL.—Not later than 90 days after the date of receipt of an application that meets the requirements of subsection (a), the head of the Federal agency receiving the application shall inform the applicant, in writing, of the approval or disapproval of the application, including the approval or disapproval of any waiver sought under paragraph (1).

(B) DISAPPROVAL.—If an application or waiver is disapproved—

(i) the written notice shall identify the reasons for the disapproval; and

(ii) the applicant shall be provided an opportunity to amend the application or to petition the agency head to reconsider the disapproval.

SEC. 7. AUTHORITY OF HEADS OF FEDERAL AGENCIES.

(a) IN GENERAL.—The President, acting through the heads of the appropriate Federal agencies, shall promulgate regulations necessary—

(1) to carry out this Act; and

(2) to ensure that this Act is applied and implemented by all Federal agencies.

(b) SCOPE OF COVERAGE.—The Federal agencies that are included within the scope of this Act shall include—

(1) the Department of Agriculture;

(2) the Department of Commerce;

(3) the Department of Defense;

(4) the Department of Education;

(5) the Department of Energy;

(6) the Department of Health and Human Services;

(7) the Department of Homeland Security;

(8) the Department of Housing and Urban Development;

(9) the Department of the Interior;

(10) the Department of Justice;

(11) the Department of Labor;

(12) the Department of Transportation;

(13) the Department of the Treasury;

(14) the Department of Veterans Affairs;

(15) the Environmental Protection Agency;

(16) the Small Business Administration; and

(17) such other agencies as the President determines to be appropriate.

(c) ACTIVITIES.—Notwithstanding any other provision of law, the head of each Federal agency, acting alone or jointly through an agreement with another Federal agency, may—

(1) identify related Federal programs that are suitable for providing joint financing of specific kinds of projects with respect to Indian tribes or tribal organizations;

(2) assist in planning and developing such projects to be financed through different Federal programs;

(3) with respect to Federal programs or projects that are identified or developed under paragraphs (1) or (2), develop and prescribe—

(A) guidelines;

(B) model or illustrative projects;

(C) joint or common application forms; and

(D) other materials or guidance;

(4) review administrative program requirements to identify requirements that may impede the joint financing of such projects and modify the requirements appropriately;

(5) establish common technical and administrative regulations for related Federal programs to assist in providing joint financing to support a specific project or class of projects; and

(6) establish joint or common application processing and project supervision procedures, including procedures for designating—

(A) an agency responsible for processing applications; and

(B) a lead agency responsible for project supervision.

(d) REQUIREMENTS.—In carrying out this Act, the head of each Federal agency shall—

(1) take all appropriate actions to carry out this Act when administering an assistance program;

(2) consult and cooperate with the heads of other Federal agencies; and

(3) assist in the administration of assistance programs of other Federal agencies that may be used to jointly finance projects undertaken by Indian tribes or tribal organizations.

SEC. 8. PROCEDURES FOR PROCESSING REQUESTS FOR JOINT FINANCING.

In processing an application for assistance for a project to be financed in accordance with this Act by at least 2 assistance programs, the head of a Federal agency shall take all appropriate actions to ensure that—

(1) required reviews and approvals are handled expeditiously;

(2) complete account is taken of special considerations of timing that are made known to the head of the Federal agency by the applicant that would affect the feasibility of a jointly financed project;

(3) an applicant is required to deal with a minimum number of representatives of the Federal Government;

(4) an applicant is promptly informed of a decision or problem that could affect the feasibility of providing joint assistance under the application; and

(5) an applicant is not required to get information or assurances from 1 Federal agency for a requesting Federal agency in a case in which the requesting agency makes the information or assurances directly.

SEC. 9. UNIFORM ADMINISTRATIVE PROCEDURES.

(a) IN GENERAL.—To make participation in a project simpler than would otherwise be practicable because of the application of inconsistent or conflicting technical or administrative regulations or procedures that are not specifically required by the statute that governs the Federal program under which the project is funded, the head of a Federal agency may promulgate uniform regulations concerning inconsistent or conflicting requirements with respect to—

(1) the financial administration of the project, including with respect to accounting, reporting, and auditing, and maintaining a separate bank account, to the extent consistent with this Act;

(2) the timing of payments by the Federal Government for the project in a case in which 1 payment schedule or a combined payment schedule is to be established for the project;

(3) the provision of assistance by grant rather than procurement contract; and

(4) the accountability for, or the disposition of, records, property, or structures acquired or constructed with assistance from the Federal Government under the project.

(b) REVIEW.—To make the processing of applications for assistance under a project simpler under this Act, the head of a Federal agency may provide for review of proposals for a project by a single panel, board, or committee in any case in which reviews by separate panels, boards, or committees are not specifically required by the statute that authorizes the Federal program under which the project is funded.

SEC. 10. DELEGATION OF SUPERVISION OF ASSISTANCE.

(a) IN GENERAL.—In accordance with regulations promulgated under section 7(a), the head of a Federal agency may delegate or otherwise enter into an arrangement to have another Federal agency carry out or supervise a project or class of projects jointly financed in accordance with this Act.

(b) CONDITIONS.—A delegation or other arrangement under subsection (a)—

(1) shall be made under conditions ensuring that the duties and powers delegated are exercised consistent with Federal law; and

(2) may not be made in a manner that relieves the head of a Federal agency of responsibility for the proper and efficient management of a project for which the agency provides assistance.

SEC. 11. JOINT ASSISTANCE FUNDS AND PROJECT FACILITATION.

(a) JOINT ASSISTANCE FUND.—In providing support for a project in accordance with this Act, the head of a Federal agency may provide for the establishment in the Treasury by an applicant of a joint assistance fund to ensure that amounts received by the applicant from more than 1 assistance program or appropriation are effectively administered.

(b) AGREEMENT.—

(1) IN GENERAL.—A joint assistance fund may be established under subsection (a) only in accordance with an agreement by the Federal agencies involved concerning the responsibilities of each such agency.

(2) REQUIREMENTS OF AGREEMENT.—An agreement under paragraph (1) shall—

(A) ensure the availability of necessary information to Federal agencies and Congress; and

(B) provide that the agency providing for the establishment of the fund under subsection (a) is responsible and accountable by program and appropriation for the amounts provided for the purposes of each fund..

(c) USE OF EXCESS FUNDS.—In any project conducted under this Act for which a joint assistance fund has been established under subsection (a) and the actual costs of the project are less than the estimated costs, use of the excess funds shall be determined by the head of the Federal agency administering the joint assistance fund, after consultation with the applicant.

SEC. 12. FINANCIAL MANAGEMENT, ACCOUNTABILITY, AND AUDITS.

(a) SINGLE AUDIT ACT.—Recipients of funding provided in accordance with this Act shall be subject to chapter 75 of title 31, United States Code.

(b) RECORDS.—

(1) IN GENERAL.—With respect to each project financed through an account in a joint assistance fund established under section 11, the recipient of amounts from the fund shall maintain records as required by the head of the Federal agency responsible for administering the fund.

(2) REQUIREMENTS.—Records described in paragraph (1) shall disclose—

(A) the amount and disposition by the recipient of assistance received under each Federal assistance program and appropriation;

(B) the total cost of the project for which such assistance was given or used;

(C) the part of the cost of the project provided from other sources; and

(D) such other information as the head of the Federal agency responsible for administering the fund determines will facilitate the conduct of an audit of the project.

(c) AVAILABILITY.—Records of a recipient related to an amount received from a joint assistance fund under this Act shall be made available, for inspection and audit, to—

(1) the head of the Federal agency responsible for administering the fund; and

(2) the Comptroller General of the United States.

SEC. 13. TECHNICAL ASSISTANCE AND PERSONNEL TRAINING.

Amounts available for technical assistance and personnel training under any Federal assistance program shall be available for technical assistance and training under a project approved for joint financing under this Act if the use of the funds involves the Federal assistance program and the project approved for joint financing.

SEC. 14. JOINT STATE FINANCING FOR FEDERAL-TRIBAL ASSISTED PROJECTS.

(a) IN GENERAL.—Under regulations promulgated under section 7(a), the head of a Federal agency may enter into an agreement with a State to extend the benefits of this Act to a project that involves assistance from—

(1) at least 1 Federal agency;

(2) a State; and

(3) at least 1 tribal agency or instrumentality.

(b) JOINT ACTION.—An agreement under subsection (a) may include arrangements to process requests or administer assistance on a joint basis.

SEC. 15. REPORT TO CONGRESS.

Not later than 1 year after the date of enactment of this Act, the President shall submit to Congress a report that includes—

(1) a description of actions taken under this Act;

(2) a detailed evaluation of the implementation of this Act, including information on the benefits and costs of jointly financed projects that accrue to participating Indian tribes and tribal organizations; and

(3) recommendations (including legislative recommendations) of the President with respect to improvement of this Act.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1529. A bill to amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by Senator INOUYE in introducing the Indian Gaming Regulatory Act Amendments of 2003 to amend and update the act.

In amending the Indian Gaming Regulatory Act of 1988 (IGRA) it is important to keep in mind the twin aims of the act: to ensure that gaming continues to be a tool for Indian economic development; and to ensure that the games conducted are kept free from corrupting forces to maintain the integrity of the industry.

This bill will update the IGRA by clarifying how vacancies in the National Indian Gaming Commission (NIGC) are filled; revising the NIGC statutory rates of pay to correspond with other current Federal rates of pay; and expanding the NIGC's reporting requirements to Congress.

The bill also clarifies the act by making the Johnson Act inapplicable to class II technological aids to bring it in line with the original intent of Congress in 1988.

The bill also requires background checks on class III management contractors, management employees, and gaming commissioners.

When the IGRA was enacted in 1988, Indian gaming was mainly high stakes bingo operations, known as ''class II gaming'' under the act. Virtually no one thought Indian gaming would become the $14.5 billion dollar industry that it is today, providing tribes with resources for development and employment opportunities where none previously existed.

In response to this success, questions have been raised—some legitimate, some not—about the efficacy of regulation within the industry. This bill requires that the NIGC and the gaming tribes develop and implement a system of minimum internal control, background investigation and licensing standards for all tribes that operate class II and class III gaming.

The bill would also ensure that the NIGC has the resources it needs to fulfill its regulatory duties by increasing the fee cap 50 percent over the next six years. With that budgetary increase, and prior to levying any fees, the NIGC would be required to determine and take into account the nature and level of any tribal or joint tribal-state regulatory activities and to reduce the fees assessed accordingly.

The bill will enable the NIGC to provide technical assistance and training to Indian tribes. The NIGC would be authorized to expend the civil fines it recoups for violations of the IGRA for these purposes.

The last substantive reform in the bill goes to the very heart of the act—economic development for Indian tribes. Because of gaming, some tribes have been very successful, employing thousands of people, both Indian and non-Indian, and reducing poverty and the welfare rolls in their areas.

This success has attracted the attention of other governments, cash-strapped and hungry for new revenues. Many States are looking to gaming tribes to help eliminate their deficits, and some States are reportedly refusing to enter or renew compacts required under IGRA until tribes agree to revenue sharing provisions.

Congress never envisioned that kind of pressure would be applied to tribes and, keeping these facts and the goals of IGRA in mind, the bill includes provisions to ensure that tribal gaming revenues are first used to meet the needs of tribal governments and their members. Only after satisfying those needs, would States and tribes be able to negotiate a revenue-sharing agreement.

To encourage States and tribes to negotiate, the bill requires the Secretary to perform her existing responsibilities under the act within 90 days and, at the back end, when existing compacts are up for renewal, the bill provides a 180 day grace period beyond the expiration date of compacts to encourage tribal-State agreements.

I ask unanimous consent that a copy 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. 1529

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 ''Indian Gaming Regulatory Act Amendments of 2003''.

SEC. 2. PAYMENT AND ADMINISTRATION OF GAMING FEES.

(a) DEFINITIONS.—Section 4(7) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(7)) is amended by adding at the end the following:

''(G) TECHNOLOGICAL AIDS.—Notwithstanding any other provision of law, sections 1 through 7 of the Act of January 2, 1951 (commonly known as the 'Gambling Devices Transportation Act') (15 U.S.C. 1171 through 1177) shall not apply to any gaming described in subparagraph (A)(i) for which an electronic aid, computer, or other technological aid is used in connection with the gaming.''.

(b) NATIONAL INDIAN GAMING COMMISSION.—Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) VACANCIES.—

''(1) IN GENERAL.—A vacancy on the Commission shall be filled in the same manner as the original appointment.

''(2) SUCCESSORS.—Unless a member of the Commission is removed for cause under subsection (b)(6), the member may—

''(A) be reappointed; and

''(B) serve after the expiration of the term of the member until a successor is appointed.''; and

(2) in subsection (e), in the last sentence, by inserting ''or disability'' after ''in the absence''.

(c) POWERS OF CHAIRMAN.—Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2705) is amended by adding at the end the following:

''(c) DELEGATION.—The Chairman may delegate to an individual Commissioner any of the authorities described in subsection (a).

''(d) APPLICABLE AUTHORITY.—In carrying out any function under this section, a Commissioner serving in the capacity of the Chairman shall be governed by—

''(1) such general policies as are formally adopted by the Commission; and

''(2) such regulatory decisions, findings, and determinations as are made by the Commission.''.

(d) POWERS OF COMMISSION.—Section 7 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended—

(1) in paragraphs (1), (2), and (4) of subsection (b), by striking ''class II gaming'' each place it appears and inserting ''class II gaming and class III gaming'';

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting after subsection (b) the following:

''(c) STRATEGIC PLAN.—

''(1) IN GENERAL.—The Commission shall develop a strategic plan for use in carrying out activities of the Commission.

''(2) REQUIREMENTS.—The strategic plan shall include—

''(A) a comprehensive mission statement describing the major functions and operations of the Commission;

''(B) a description of the goals and objectives of the Commission;

''(C) a description of the means by which those goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives;

''(D) a performance plan for achievement of those goals and objectives that is consistent with—

''(i) other components of the strategic plan; and

''(ii) section 1115 of title 31, United States Code;

''(E) an identification of the key factors that are external to, or beyond the control of, the Commission that could significantly affect the achievement of those goals and objectives; and

''(F) a description of the program evaluations used in establishing or revising those goals and objectives, including a schedule for future program evaluations.

''(3) BIENNIAL PLAN.—

''(A) PERIOD COVERED.—The strategic plan shall cover a period of not less than 5 fiscal years beginning with the fiscal year in which the plan is submitted.

''(B) UPDATES AND REVISIONS.—The strategic plan shall be updated and revised biennially.''; and

(4) in subsection (d) (as redesignated by paragraph (2))—

(A) in paragraph (3), by striking ''and'' at the end;

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

''(4) the strategic plan for activities of the Commission described in subsection (c); and''.

(e) COMMISSION STAFFING.—Section 8 of the Indian Gaming Regulatory Act (25 U.S.C. 2707) is amended—

(1) in subsection (a), by striking ''GS–18 of the General Schedule under section 5332'' and inserting ''level IV of the Executive Schedule under section 5318'';

(2) in subsection (b)—

(A) by striking ''(b) The Chairman'' and inserting the following:

''(b) STAFF.—

''(1) IN GENERAL.—The Chairman''; and

(B) by striking the last sentence and inserting the following:

''(2) COMPENSATION.—

''(A) IN GENERAL.—Staff appointed under paragraph (1) shall be paid without regard to the provision of chapter 51 and subchapter III of chapter 53, of title 5, United States Code, relating to General Schedule pay rates.

''(B) MAXIMUM RATE OF PAY.—The rate of pay for an individual appointed under paragraph (1) shall not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''; and

(3) by striking subsection (c) and inserting the following:

''(c) TEMPORARY SERVICES.—

''(1) IN GENERAL.—The Chairman may procure temporary and intermittent services under section 3109 of title 5, United States Code.

''(2) MAXIMUM RATE OF PAY.—The rate of pay for an individual for service described in paragraph (1) shall not exceed the daily equivalent of the maximum rate payable for level IV of the Executive Schedule under section 5318 of title 5, United States Code.

(f) TRIBAL GAMING ORDINANCES.—Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) is amended—

(1) in subsection (b)(2)(F), by striking clause (i) and inserting the following:

''(i) ensures that—

''(I) background investigations are conducted on the tribal gaming commissioners, key tribal gaming commission employees, and primary management officials and key employees of the gaming enterprise; and

''(II) oversight of primary management officials and key employees is conducted on an ongoing basis; and''; and

(2) in subsection (d)—

(A) in paragraph (4)—

(i) by striking ''(4) Except'' and inserting the following:

''(4) REVENUE SHARING.—

''(A) IN GENERAL.—Except for any assessments that may be agreed to under paragraph (3)(C)(iii), nothing in this section confers on a State or political subdivision of a State authority to impose any tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based on the lack of authority in the State or a political subdivision of the State to impose such a tax, fee, charge, or other assessment.

''(B) APPORTIONMENT OF REVENUES.—The Secretary may not approve any Tribal-State compact or other agreement that includes an apportionment of net revenues with a State, local government, or other Indian tribes unless—

''(i) in the case of apportionment with other Indian tribes, the net revenues are not distributable by the other Indian tribes to members of the Indian tribes on a per capita basis;

''(ii) in the case of apportionment with local governments, the total amount of net revenues exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B), but only to the extent that the excess revenues reflect the actual costs incurred by affected local governments as a result of the operation of gaming activities; or

''(iii) in the case of apportionment with a State—

''(I) the total amount of net revenues—

''(aa) exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B) and clause (ii) of this subparagraph, if applicable; and

''(bb) is in accordance with regulations promulgated by the Secretary under subparagraph (C); and

''(II) a substantial economic benefit is rendered by the State to the Indian tribe.

''(C) REGULATIONS.—Not later than 90 days after the date of enactment of this paragraph, the Secretary shall promulgate regulations to provide guidance to Indian tribes and States on the scope of allowable assessments negotiated under paragraph (3)(C)(iii) and the apportionment of revenues negotiated in accordance with subparagraph (B).'';

(B) in paragraph (7)(B)(vii), by inserting ''not later than 90 days after notification is made'' after ''the Secretary shall prescribe''; and

(C) by adding at the end the following:

''(10) EXTENSION OF TERM OF TRIBAL-STATE COMPACT.—Any Tribal-State compact approved by the Secretary in accordance with paragraph (8) shall remain in effect for up to 180 days after expiration of the Tribal-State compact if—

''(A) the Indian tribe certifies to the Secretary that the Indian tribe requested a new compact not later than 90 days before expiration of the compact; and

''(B) a new compact has not been agreed on.''.

(g) MANAGEMENT CONTRACTS.—Section 12 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended—

(1) by striking the section heading and all that follows through ''Subject'' in subsection (a)(1) and inserting the following:

''SEC. 12. MANAGEMENT CONTRACTS.

''(a) CLASS II GAMING AND CLASS III GAMING ACTIVITIES; INFORMATION ON OPERATORS.—

''(1) GAMING ACTIVITIES.—Subject''; and

(2) in subsection (a)(1), by striking ''class II gaming activity that the Indian tribe may engage in under section 11(b)(1) of this Act,'' and inserting ''class II gaming activity in which the Indian tribe may engage under section 11(b)(1), or a class III gaming activity in which the Indian tribe may engage under section 11(d),''.

(h) COMMISSION FUNDING.—Section 18 of the Indian Gaming Regulatory Act (25 U.S.C. 2717) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) through (3) and inserting the following:

''(1) SCHEDULE OF FEES.—

''(A) IN GENERAL.—Except as provided in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission, on a quarterly basis, by each gaming operation that conducts a class II gaming or class III gaming activity that is regulated, in whole or in part, by this Act.

''(B) RATES.—The rate of fees under the schedule established under subparagraph (A) that are imposed on the gross revenues from each operation that conducts a class II gaming or class III gaming activity described in that paragraph shall be (as determined by the Commission)—

''(i) a progressive rate structure levied on the gross revenues in excess of $1,500,000 from

each operation that conducts a class II gaming or class III gaming activity; or

''(ii) a flat fee levied on the gross revenues from each operation that conducts a class II gaming or class III gaming activity.

''(C) TOTAL AMOUNT.—The total amount of all fees imposed during any fiscal year under the schedule established under subparagraph (A) shall not exceed—

''(i) $10,000,000 for each of fiscal years 2004 and 2005;

''(ii) $11,000,000 for each of fiscal years 2006 and 2007; and

''(iii) $12,000,000 for each of fiscal years 2008 and 2009.''; and

(B) by redesignating paragraphs (4) through (6) as paragraphs (2) through (4), respectively;

(2) by redesignating subsection (b) as subsection (d);

(3) in paragraph (2) of subsection (d) (as redesignated by paragraph (2)), by striking ''section 19 of this Act'' and inserting ''section 28''; and

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

''(b) FEE PROCEDURES.—

''(1) IN GENERAL.—By a vote of not less than 2 members of the Commission, the Commission shall adopt the schedule of fees provided for under this section.

''(2) FEES ASSESSED.—In assessing and collecting fees under this section, the Commission shall take into account the duties of, and services provided by, the Commission under this Act.

''(3) REGULATIONS.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.

''(c) FEE REDUCTION PROGRAM.—

''(1) IN GENERAL.—In making a determination of the amount of fees to be assessed for any class II gaming or class III gaming activity under the schedule of fees under this section, the Commission may provide for a reduction in the amount of fees that otherwise would be collected on the basis of—

''(A) the extent and quality of regulation of the gaming activity provided by a State or Indian tribe, or both, in accordance with an approved State-Tribal compact;

''(B) the extent and quality of self-regulating activities covered by this Act that are conducted by an Indian tribe; and

''(C) other factors determined by the Commission, including—

''(i) the unique nature of tribal gaming as compared with commercial gaming, other governmental gaming, and charitable gaming;

''(ii) the broad variations in the nature, scale, and size of tribal gaming activity;

''(iii) the inherent sovereign rights of Indian tribes with respect to regulating the affairs of Indian tribes;

''(iv) the findings and purposes under sections 2 and 3;

''(v) the amount of interest or investment income derived from the Indian gaming regulation accounts; and

''(vi) any other matter that is consistent with the purposes under section 3.

''(2) RULEMAKING.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.''.

(i) ADDITIONAL AMENDMENTS.—The Indian Gaming Regulatory Act is amended—

(1) by striking section 19 (25 U.S.C. 2718);

(2) by redesignating sections 20 through 24 (25 U.S.C. 2719 through 2723) as sections 23 through 27, respectively;

(3) by inserting after section 18 (25 U.S.C. 2717) the following:

''SEC. 19. INDIAN GAMING REGULATION ACCOUNTS.

''(a) IN GENERAL.—All fees and civil forfeitures collected by the Commission in accordance with this Act shall—

''(1) be maintained in separate, segregated accounts; and

''(2) be expended only for purposes described in this Act.

''(b) INVESTMENTS.—

''(1) IN GENERAL.—The Commission shall invest such portion of the accounts maintained under subsection (a) as are not, in the judgment of the Commission, required to meet immediate expenses.

''(2) TYPES OF INVESTMENTS.—Investments may be made only in interest-bearing obligations of the United States guaranteed as to both principal and interest by the United States.

''(c) SALE OF OBLIGATIONS.—Any obligation acquired with funds in an account maintained under subsection (a)(1) (except special obligations issued exclusively to those accounts, which may be redeemed at par plus accrued interest) may be sold by the Commission at the market price.

''(d) CREDITS TO INDIAN GAMING REGULATORY ACCOUNTS.—The interest on, and proceeds from, the sale or redemption of any obligation held in an account maintained under subsection (a)(1) shall be credited to and form a part of the account.

''SEC. 20. MINIMUM STANDARDS.

''(a) CLASS I GAMING.—Notwithstanding any other provision of law, class I gaming on Indian land—

''(1) shall remain within the exclusive jurisdiction of the Indian tribe having jurisdiction over the Indian land; and

''(2) shall not be subject to this Act.

''(b) CLASS II GAMING.—

''(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class II gaming activities conducted by the Indian tribe.

''(2) CONDUCT OF CLASS II GAMING.—Any class II gaming activity shall be conducted in accordance with—

''(A) section 11; and

''(B) regulations promulgated under subsection (d).

''(c) CLASS III GAMING.—

''(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class III gaming activities conducted by the Indian tribe.

''(2) CONDUCT OF CLASS III GAMING.—Any class III gaming operated by an Indian tribe under this Act shall be conducted in accordance with—

''(A) section 11; and

''(B) regulations promulgated under subsection (d).

''(d) RULEMAKING.—

''(1) IN GENERAL.—

''(A) PROMULGATION.—Not later than 180 days after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall develop procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate regulations relating to—

''(i) the monitoring and regulation of tribal gaming;

''(ii) the establishment and regulation of internal control systems; and

''(iii) the conduct of background investigation.

''(B) PUBLICATION OF PROPOSED REGULATIONS.—Not later than 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall publish in the Federal Register proposed regulations developed by a negotiated rulemaking committee in accordance with this section.

''(2) COMMITTEE.—A negotiated rulemaking committee established in accordance with section 565 of title 5, United States Code, to carry out this subsection shall be composed only of Federal and Indian tribal government representatives, a majority of whom shall be nominated by and be representative of Indian tribes that conduct gaming in accordance with this Act.

''(e) ELIMINATION OF EXISTING REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), as of the date that is 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, regulations establishing minimum internal control standards promulgated by the Commission that are in effect as of the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003 shall have no force or effect.

''(2) EXCEPTION FOR AFFIRMATION OF EXISTING REGULATIONS.—Notwithstanding paragraph (1), if, before the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission certifies to the Secretary of the Interior that the Commission has promulgated regulations that establish minimum internal control standards that meet the requirements of subsection (d)(1)(A) and were developed in consultation with affected Indian tribes, the regulations shall—

''(A) be considered to satisfy the requirements of paragraph (1); and

''(B) remain in full force and effect.

''SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION CIVIL FINES.

''(a) ACCOUNT.—Amounts collected by the Commission under section 14 shall—

''(1) be deposited in a separate Indian gaming regulation account established under section 19(d)(1)(A); and

''(2) be available to the Commission, as provided for in advance in Acts of appropriation, for use in carrying out this Act.

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—The Commission may provide grants and technical assistance to Indian tribes using funds secured by the Commission under section 14.

''(2) USES.—A grant or financial assistance provided under paragraph (1) may be used only—

''(A) to provide technical training and other assistance to an Indian tribe to strengthen the regulatory integrity of Indian gaming;

''(B) to provide assistance to an Indian tribe to assess the feasibility of conducting nongaming economic development activities on Indian land;

''(C) to provide assistance to an Indian tribe to devise and implement programs and treatment services for individuals diagnosed as problem gamblers; or

''(D) to provide to an Indian tribe 1 or more other forms of assistance that are not inconsistent with this Act.

''(c) SOURCE OF FUNDS.—Amounts used to carry out subsection (b) may be derived only from funds—

''(1) collected by the Commission under section 14; and

''(2) authorized for use in advance by an Act of appropriation.

''(d) REGULATIONS.—The Commission may promulgate such regulations as are necessary to carry out this section.

''SEC. 22. TRIBAL CONSULTATION.

''In carrying out this Act, the Secretary of the Interior, Secretary of the Treasury, and Chairman of the Commission shall involve and consult with Indian tribes to the maximum extent practicable, as appropriate, in a manner that is consistent with the Federal trust and the government-to-government relationship that exists between Indian tribes and the Federal Government.''; and

(4) by inserting after section 27 (as redesignated by paragraph (2)) the following:

''SEC. 28. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—Subject to section 18, there is authorized to be appropriated to carry out this Act, for fiscal year 1998 and each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 18(a).

''(b) ADDITIONAL AMOUNTS.—Notwithstanding section 18, in addition to amounts authorized to be appropriated by subsection (a), there are authorized to be appropriated $2,000,000 to fund the operation of the Commission for fiscal year 1998 and each fiscal year thereafter.''.

By Mr. DASCHLE:

S. 1530. A bill to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, I am pleased to introduce the Lower Brule and Crow Creek Sioux Tribal Parity Act of 2003.

This legislation is intended to provide additional and final compensation to the Lower Brule Sioux and Crow Creek Sioux Tribes for losses from the Pick-Sloan Missouri River Basin Program, commonly known as the ''Flood Control Act of 1944''.

The Pick-Sloan Program inundated the fertile bottom land of the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribe. Congress has provided compensation to several South Dakota Indian tribes, including Lower Brule and Crow Creek, that border the Missouri River. The compensation provided, however, has not been consistent in terms of either criteria, or methodology.

Based on the methodology determined appropriate by the General Accounting Office and used by Congress to determine the compensation for the Cheyenne River Sioux Tribe, new calculations have determined that Lower Brule is entitled to additional final compensation of $137,065,558 from the United States. The Crow Creek Sioux Tribe is entitled to additional compensation of $100,244,040. The legislation I am introducing will provide parity for the Lower Brule Sioux and Crow Creek Sioux Tribes.

These two tribes are entitled to a final parity payment based upon this GAO-approved methodology. I look forward to moving ahead with this legislation for the benefit of the people of Lower Brule and Crow Creek.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1530

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 ''Tribal Parity Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 891)), was approved to promote the general economic development of the United States;

(2) the Fort Randall and Big Bend dam and reservoir projects in South Dakota—

(A) are major components of the Pick-Sloan Missouri River Basin Program; and

(B) contribute to the national economy;

(3) the Fort Randall and Big Bend projects inundated the fertile bottom land of the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes;

(4) Congress has provided compensation to several Indian tribes, including the Lower Brule and Crow Creek Sioux Tribes, that border the Missouri River and suffered injury as a result of 1 or more Pick-Sloan Projects;

(5) the compensation provided to those Indian tribes has not been consistent;

(6) Missouri River Indian tribes that suffered injury as a result of 1 or more Pick-Sloan Projects should be adequately compensated for those injuries, and that compensation should be consistent among the Tribes;

(7) the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, based on methodology determined appropriate by the General Accounting Office, are entitled to receive additional compensation for injuries described in paragraph (6), so as to provide parity among compensation received by all Missouri River Indian tribes.

SEC. 3. LOWER BRULE SIOUX TRIBE.

Section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 105–132; 111 Stat. 2565) is amended by striking ''$39,300,000'' and inserting ''$176,398,012''.

SEC. 4. CROW CREEK SIOUX TRIBE.

Section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (Public Law 104–223; 110 Stat. 3027) is amended by striking ''$27,500,000'' and inserting ''$100,244,040''.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. WARNER, Mr. BINGAMAN, Mr. ALLEN, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. LAUTENBERG, Mr. BOND, Mr. HARKIN, Mr. DOMENICI, Mr. JEFFORDS, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mrs. DOLE, and Mr. BREAUX):

S. 1531. A bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HATCH. Mr. President, I rise today in support of S. 1531, the John Marshall Commemorative Coin Act. This bill authorizes the Treasury Department to mint and issue coins bearing the likeness of Chief Justice John Marshall for the purpose of supporting the Supreme Court Historical Society. Sales of the coin would, in addition to raising funds for the Society, also cover all of the costs of minting and issuing these coins, so that the American taxpayer would not bear any cost whatsoever if this legislation were enacted.

Justice Oliver Wendell Holmes once called John Marshall ''the great Chief Justice.'' After 34 years on the bench, from 1801–1835, Marshall earned that title by establishing many of the constitutional doctrines we revere today. Writing over 500 opinions, he truly made the third branch of government co-equal with the legislative and executive branches.

Marshall's greatness lay in his ability to figure out how to put in practice the concept of checks and balances. In powerfully written decisions, the Marshall Court established several constitutional doctrines, forming the bedrock of contemporary jurisprudence including: establishing judicial review, prohibiting State taxation of the Federal Government, making the federal supreme court final arbiter of decisions issued by State supreme courts, and expounding the limits of the contracts and commerce clauses. Indeed, he solidified early Federalist ideas by defining the relationships between the Federal Government and the States; a position that was forgotten and is only very recently re-emerging in our jurisprudence.

Born in 1755, Marshall was a key player in the founding generation who established our constitutional government. He was an early and active member in the revolutionary cause, joining with the revolutionary army and fighting as one of George Washington's Officers in at least four major battles and enduring the winter at Valley Forge. Marshall later served as a member of Congress and as Secretary of State before his ascension to the Supreme Court.

There is a no more fitting likeness for a coin that would support the efforts of the Supreme Court Historical Society. The Society is a non-profit organization whose purpose is to preserve and disseminate the history of the Supreme Court of the United States. Founded by Chief Justice Warren Burger, the Society's mission is to provide information and historical research on our Nations highest court. The Society accomplishes this mission by conducting programs, publishing books, supporting historical research and collecting antiques and artifacts related to the Court's history.

Recent research includes efforts to capture the history of the Court during the Franklin D. Roosevelt period, the Civil War, and the evolution of the Chief Justice's role on the court. Lectures and programs are open to the public as well as Society members. Additionally, the Society seeks to acquire the private papers, period furnishings, and art work relating to court history.

For all of these reasons, I urge my colleagues to join with me in this effort to memorialize the Great Chief Justice John Marshall and assist a worthwhile organization like the Supreme Court Historical Society.

Thank you, Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, I join my Judiciary Committee colleague Senator HATCH and others in introducing a bill to authorize the minting of a commemorative coin in honor of United

States Supreme Court Chief Justice John Marshall, commonly known as ''the Great Chief Justice.''

Marshall's contributions to our country have been noted by members of the executive and judicial branches. President John Quincy Adams described his father's appointment of Marshall to the Supreme Court as ''one of the most important services rendered by [his father] to his country.'' Fellow Supreme Court Justice Joseph Story described Marshall in the following terms: ''Patience, moderation, candor, urbanity, quickness of perception, dignity of deportment, gentleness of manners, genius which commands respect, and learning which justifies confidence.'' Congress' passage of the ''John Marshall Commemorative Coin Act'' in honor of the upcoming 250th anniversary of his birth would be a fitting complement to these, and other, recognitions of ''the Great Chief Justice's'' extraordinary accomplishments.

Marshall presided over the Supreme Court during the formative years of 1801–1835. Before that time, the Supreme Court played a comparatively minor role in our Federal government. Under Marshall's leadership, the Court evolved into a powerful institution and assumed its role as guardian of the Constitution, and as the arbiter of disputes between the Federal government and the States. As one legal scholar commented: ''It is not inconceivable that the Supreme Court would have remained a minor appendage of our government, and our constitutional development taken a distinctly different course, but for the fact that John Marshall occupied the Chief Justice's chair during the first three decades of the nineteenth century.''

Marshall is considered the founding father of American Constitutional law. To name just a few of Marshall's groundbreaking opinions, Marbury v. Madison the first instance in which the Supreme Court pronounced an act of Congress unconstitutional is the leading precedent for the Court's power to judge the constitutionality of legislative and executive acts. In McCulloch v. Maryland, Marshall asserted the right of the Supreme Court to decide questions involving the conflicting powers of the Federal and State governments, affirmed Congress' authority to act in furtherance of its enumerated powers, and established the standard for determining when the exercise of a Federal power limits the otherwise sovereign power of a State. In Cohens v. Virginia, Marshall established the authority of the Federal judiciary to review decisions of the highest State courts. As a final illustration of Marshall's many important judicial opinions, in Gibbons v. Ogden, he set forth Congress' power to regulate commerce among the States and with foreign nations.

Aside from the specific constitutional principles Marshall established while on the Court, he made many other important contributions to American constitutional law. For example, Marshall advocated that judges, as ultimate guardians of the Constitution, should be above politics and that the role of the Nation's courts was to mitigate the effects of factional politics. Moreover, Marshall adopted an approach to constitutional interpretation termed ''fair construction'' which struck a middle ground between an overly restrictive, and an overly broad, reading of the Constitution because he feared that strict construction would ultimately weaken the Constitution and, in due course, the Nation.

In closing, it is difficult to overstate Chief Justice Marshall's contributions to our Nation. Many years ago, when I read Marshall's opinions in my first year of law school, I admired the Chief Justice. Now, having served in Congress and worked within the principles Marshall established, I find him all the more admirable. A commemorative coin in his honor would be a fitting tribute to ''the Great Chief Justice.''

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

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

S. 1531

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 ''Chief Justice John Marshall Commemorative Coin Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) John Marshall served as the Chief Justice of the Supreme Court of the United States from 1801 to 1835, the longest tenure of any Chief Justice in the Nation's history;

(2) Under Marshall's leadership, the Supreme Court expounded the fundamental principles of constitutional interpretation, including judicial review, and affirmed national supremacy, both of which served to secure the newly founded United States against dissolution; and

(3) John Marshall's service to the nascent United States, not only as Chief Justice, but also as a soldier in the Revolutionary War, as a member of the Virginia Congress and the United States Congress, and as Secretary of State, makes him one of the most important figures in our Nation's history.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATION.—In commemoration of the 250th anniversary of the birth of Chief Justice John Marshall, the Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall mint and issue not more than 400,000 $1 coins, each of which shall—

(1) weigh 26.73 grams;

(2) have a diameter of 1.500 inches; and

(3) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of Chief Justice John Marshall and his contributions to the United States.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2005''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary, after consultation with the Commission of Fine Arts, and the Supreme Court Historical Society; and

(2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only one facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue coins minted under this Act beginning on January 1, 2005.

(d) TERMINATION OF MINTING AUTHORITY.—No coins may be minted under this Act after December 31, 2005.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins minted under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in section 7 with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins minted under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to pre-paid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) IN GENERAL.—All sales of coins minted under this Act shall include a surcharge of $10 per coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Supreme Court Historical Society for the purposes of—

(1) historical research about the Supreme Court and the Constitution of the United States and related topics;

(2) supporting fellowship programs, internships, and docents at the Supreme Court; and

(3) collecting and preserving antiques, artifacts, and other historical items related to the Supreme Court and the Constitution of the United States and related topics.

(c) AUDITS.—The Supreme Court Historical Society shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Society under subsection (b).

SEC. 8. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 3(a) shall result in no net cost to the Federal Government.

(b) PAYMENT FOR THE COINS.—The Secretary may not sell a coin referred to in section 3(a) unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the Federal Government for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

By Ms. STABENOW (for herself, Mr. ENZI, Mr. JOHNSON, Mr. HAGEL, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE):

S. 1532. A bill to establish the Financial Literacy Commission, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. STABENOW. Mr. President, I rise today to introduce the Financial Literacy Community Outreach Act of 2003. This bill, which I am proud to introduce with my colleague and friend, Mr. ENZI, is the product of several months of work. We have reached out to financial literacy advocates, financial institutions, Federal agencies, and other interested parties to craft a comprehensive bill to streamline, augment, and improve our government's approach to financial literacy.

The need for this legislation is clear. Studies show alarming shortcomings in the state of financial literacy in America. For example, in a survey of consumers 18 years and older conducted by the American Association of Retired Persons in late 1998, only 11 percent of respondents correctly answered 4 basic financial questions. A study by the Jump$tart Coalition for Personal Financial Literacy found that, in 2002, on average, high school seniors could correctly answer only about 50 percent of a set of financial answers put to them a failing grade.

In addition, from 1990 to 2000, the outstanding credit card debt among households more than tripled from $200 billion to $600 billion. And, a 2002 study by John Hancock found that, in a study it did, 50 percent of respondents said they spend half an hour or less per month managing their retirement funds.

These are all very disturbing statistics and, just a few examples of why I feel the need to act to improve our government's approach to this problem. We need a clear and effective strategy to address these problems.

The Federal Government understands that financial literacy is essential to a healthy economy and the protection of consumers. That is why many Federal departments and agencies have employed their resources and expertise to educate the public about how to accomplish such goals as realizing the dreams of homeownership, saving for a child's college education, and planning for a secure retirement. These agencies do this through grant programs, through special training, and by developing financial literacy materials.

Unfortunately, what Mr. ENZI and I, as well as others active on this issue, have come to realize is that these programs are uncoordinated and, in some places, duplicative. There is no mechanism for these agencies to interact and assess the good work they are doing. That is why, in our legislation, we set up a Federal Financial Literacy Commission.

Made up of Federal decision makers with jurisdiction over one or more financial literacy programs, including the Federal Reserve, the FDIC, the Treasury Department, the Department of Housing and Urban Development, the Securities and Exchange Commission, and the Small Business Administration, our Commission, and its constituent members, will take all necessary steps to coordinate, streamline and improve existing programs. The Commission will also make recommendations to Congress on legislation that may be needed to improve financial education.

I am pleased to say that this new Commission will operate as a nexus for all Federal financial literacy materials, grants, and information; spearhead efforts to reach out to the public with financial literacy messages; manage a toll free hotline; operate a website promoting financial literacy and highlighting Federal grants, materials, and programs; and, it may feature private and non-profit resources available to the public.

Improving the state of financial literacy is a common sense thing to do. It is something that we can do through cooperation and strategic thinking about our Federal resources. And, it can be done with the input of all concerned interests. Many people in the Senate have worked diligently on the subject of financial literacy, including Mr. SARBANES, the Ranking Member of the Banking, Housing, and Urban Affairs Committee who has done important work on this subject.

I am pleased that Mr. ENZI is the lead Republican sponsor of this legislation; he is a true leader and cares passionately about this issue. And, I appreciate the leadership of the bipartisan group of Senators who have agreed to cosponsor our bill: Mr. HAGEL, Mr. JOHNSON, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE. I look forward to working with them and all of my other colleagues in the Senate to ensure that we have an effective, coordinated, and comprehensive Federal approach to improving financial literacy in our country.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 1532

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 ''Financial Literacy Community Outreach Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) although the evolution of our financial system has offered families in the United States many new opportunities to build wealth and security, the ready availability of credit, an overwhelming array of investment and savings options, and the shifting of responsibility for retirement savings from employer to employee has made the understanding of personal finance ever more important;

(2) many young adults within the United States have demonstrated difficulty understanding basic financial concepts;

(3) in surveys of high school seniors conducted by the JumpStart Coalition for Personal Financial Literacy—

(A) in 1997 participants, on average, failed, and answered only 57 percent of the questions correctly;

(B) in 2000, the average score fell to 51 percent; and

(C) in 2002, disturbingly, on average, only 50 percent of the questions were answered correctly;

(4) in a survey of consumers 18 years and older conducted by the American Association of Retired Persons in late 1998, only 11 percent of respondents correctly answered 4 basic financial questions;

(5) a similar survey of 800 defined benefit contribution plan participants conducted by John Hancock in 2002 found that 50 percent of respondents said they spend half an hour or less per month managing their retirement funds;

(6) households in the United States are not reaching their full potential in financial management, and as a result—

(A) the personal savings rate fell to only 1.6 percent of disposable income in 2001;

(B) from 1990 to 2000, outstanding credit card debt among households more than tripled from $200,000,000,000 to $600,000,000,000;

(C) in 2001, the total household debt exceeded total household disposable income by nearly 10 percent;

(D) less than half of all households hold stock in any form, including mutual funds and 401(k)-style pension plans; and

(E) almost half of all workers have accumulated less than $50,000 for their retirement, and ⅓ have saved less than $10,000;

(7) many Government agencies recognize that the people of the United States lack expertise in financial literacy and are working to help them, including efforts by—

(A) the Department of Labor and the Federal Deposit Insurance Corporation, which have joined together to create ''Money Smart'', a training program to help adults enhance their money-management skills;

(B) the Department of the Treasury, which has formed the ''Financial Services Education Council'', and has published a guide called ''Helping People in Your Community Understand Basic Financial Services'';

(C) the Department of the Treasury in promoting a middle school curriculum called ''Money Math: Lessons for Life'';

(D) the Federal Trade Commission, which publishes information about credit, including ''Credit Matters: How to qualify for credit, keep a good credit history, and protect your credit'';

(E) the Department of Agriculture, which runs the ''Family Economics Program'' to assist educators who deliver basic consumer education and teach personal financial management skills to young people;

(F) the Securities and Exchange Commission, which has an Office of Investor Education and Assistance;

(G) the Board of Governors of the Federal Reserve System, which has developed materials explaining how to use credit responsibly, obtain a mortgage, build wealth, and lease a car;

(H) the Department of Housing and Urban Development in funding housing counseling agencies nationwide that provide advice on how to save for and buy a home; and

(I) the Government Services Administration in hosting the Federal Consumer Information Center, which has an electronic catalogue of information about Federal financial literacy programs;

(8) there is very little coordination among Federal programs, resulting in duplication of effort and a confusing array of information spread among many agencies;

(9) there is a serious problem with financial illiteracy among many low-income consumers, who often—

(A) do not have a relationship with a mainstream financial services provider;

(B) lack experience and information about personal finance; and

(C) are ill-prepared to make informed financial decisions;

(10) many people in the United States—

(A) are in a precarious financial position because they lack an understanding of economic and financial fundamentals and of financial planning;

(B) are forgoing opportunities to build wealth by failing to target their investments to higher yielding, yet secure savings vehicles; and

(C) are failing to adequately plan and save for retirement; and

(11) financial literacy is the foundation that supports—

(A) economic independence for the citizens of the United States; and

(B) the functioning of our free market economy.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term ''Commission'' means the Financial Literacy Commission established under section 101; and

(2) the term ''financial literacy'' means basic personal income and household money management and planning skills, including—

(A) saving and investing;

(B) building wealth;

(C) managing spending, credit, and debt effectively;

(D) tax and estate planning;

(E) the ability to ascertain fair and favorable credit terms and avoid abusive, predatory, or deceptive credit offers;

(F) the ability to understand, evaluate, and compare financial products, services, and opportunities; and

(G) all other related skills.

TITLE I—FINANCIAL LITERACY COMMISSION

SEC. 101. ESTABLISHMENT OF FINANCIAL LITERACY COMMISSION.

(a) IN GENERAL.—There is established a commission to be known as the Financial Literacy Commission.

(b) PURPOSE.—The Commission shall serve to improve the financial literacy of persons in the United States by overseeing, implementing, and reporting upon the effects of the performance of the duties of the Commission set forth in section 102.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of not more than 19 members, including—

(A) the Comptroller of the Currency;

(B) the Secretary of Agriculture of the Department of Agriculture;

(C) the Secretary of Education of the Department of Education;

(D) the Secretary of Housing and Urban Development of the Department of Housing and Urban Development;

(E) the Secretary of Labor of the Department of Labor;

(F) the Secretary of the Treasury;

(G) the Chairman of the Federal Deposit Insurance Corporation;

(H) the Chairman of the Board of Governors of the Federal Reserve System;

(I) the Chairman of the Federal Trade Commission;

(J) the Administrator of General Services of the General Services Administration;

(K) the Commissioner of the Internal Revenue Service;

(L) the Chairman of the National Credit Union Administration Board;

(M) the Director of the Office of Thrift Supervision;

(N) the Chairman of the Securities and Exchange Commission;

(O) the Administrator of the Small Business Administration;

(P) the Commissioner of the Social Security Administration; and

(Q) at the discretion of the President, not more than 3 individuals appointed by the President from among the administrative heads of any other Federal agency, department, or other Government entity, whom the President believes would be helpful in implementing the purpose of the Commission.

(2) DESIGNEES.—The individuals referred to in paragraph (1) may appoint a designee from within the department or agency of that individual to serve as a member of the Commission.

(d) FEDERAL EMPLOYEE REQUIREMENT.—Each member of the Commission shall be an officer or employee of the United States.

(e) CHAIRPERSON.—The Commission shall select a Chairperson from among its members. The Secretary of the Treasury, or the designee thereof under subsection (c)(2), shall chair the initial meeting of the Commission.

(f) VICE CHAIRPERSON.—The Commission shall select a Vice Chairperson from among its members.

(g) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment or designation, as provided under subsection (c).

(h) INITIAL MEETING.—The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

(i) MEETINGS.—

(1) SEMIANNUAL MEETINGS.—The Commission shall hold, at the call of the Chairperson, 1 meeting every 6 months to conduct necessary business. All such meetings shall be open to the public.

(2) DISCRETIONARY MEETINGS.—The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this Act.

(j) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(k) EXECUTIVE COMMITTEE.—

(1) IN GENERAL.—The Commission shall establish an Executive Committee comprised of—

(A) the Chairperson;

(B) the Vice Chairperson; and

(C) 3 at-large members selected by the Commission from among members appointed under subsection (c).

(2) TERM.—Members of the Executive Committee selected under paragraph (1)(C) shall serve for such time as determined by the Commission.

(3) MEETINGS.—The Executive Committee shall hold, at the call of the Chairperson, 1 meeting every 2 months to conduct necessary administrative business.

(4) QUORUM.—A majority of the members of the Executive Committee shall constitute a quorum.

SEC. 102. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission, through the authority of the members referred to in section 101(c), shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy programs, materials, and grants of the Federal Government.

(b) WEBSITE.—

(1) IN GENERAL.—The Commission shall establish and maintain a website, and attempt to register the domain name ''FinancialLiteracy.gov'', or, if such domain name is not available, a similar domain name.

(2) PURPOSES.—The website established under paragraph (1) shall—

(A) serve as a clearinghouse of information about Federal financial literacy programs;

(B) provide a coordinated entry point for accessing information about all Federal publications, grants, and materials promoting enhanced financial literacy;

(C) offer information on all Federal grants to promote financial literacy, and offer information to the public on how to target, apply for, and receive a grant that is most appropriate under the circumstances;

(D) as the Commission considers appropriate, feature website links to private sector efforts, such as the JumpStart Coalition for Personal Financial Literacy, and feature information about private sector financial literacy programs, materials, or campaigns;

(E) highlight information about best practices for teaching and promoting financial literacy; and

(F) offer such other information as the Commission finds appropriate to share with the public in the fulfillment of its purpose.

(c) TOLL FREE HOTLINE.—The Commission shall establish a toll-free telephone number that shall be made available to members of the public seeking information about issues pertaining to financial literacy.

(d) DEVELOPMENT AND DISSEMINATION OF MATERIALS.—The Commission shall—

(1) develop materials to promote financial literacy; and

(2) disseminate such materials to the general public.

(e) ADMINISTRATION OF GRANT PROGRAMS.—

(1) AUTHORITY.—The Commission shall be authorized to establish and implement grant programs to promote financial literacy.

(2) ELIGIBILITY.—Grants awarded under paragraph (1) may be awarded to schools, non-profit organizations, units of general local government, faith-based organizations, and such other entities as determined eligible by the Commission.

(3) PREFERENCES.—In awarding grants under paragraph (1), the Commission shall—

(A) give preference to entities that have a demonstrated record of serving communities with people who have historically had either limited or no access to financial literacy education; and

(B) to the extent practicable, award grants to as many entities eligible under paragraph (2) as possible.

(f) INITIAL AND ANNUAL REPORTS.—

(1) INITIAL REPORT.—

(A) IN GENERAL.—Not later than 18 months after the date of the first meeting of the Commission, the Commission shall issue an initial report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the progress of the Commission in carrying out this Act.

(B) CONTENTS.—The report required under subparagraph (A) shall—

(i) identify all Federal programs, materials, and grants which seek to improve financial literacy, and assess the effectiveness of such programs; and

(ii) identify all actions that the Commission has taken to streamline, improve, or augment the financial literacy programs,

materials, and grants of the Federal Government.

(2) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than November 30 of each year, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report detailing the activities of the Commission during the preceding fiscal year, and making recommendations on ways to enhance financial literacy in the United States.

(B) CONTENTS.—The report required under subparagraph (A) shall include—

(i) information concerning the content and public use of the website established under subsection (b);

(ii) information concerning the usage of the toll-free telephone number established under subsection (c);

(iii) summaries of the financial literacy materials developed under subsection (d), and data regarding the dissemination of such materials;

(iv) information about the activities of the Commission planned for the next fiscal year;

(v) a summary of all Federal efforts to reach out to communities that have historically lacked access to financial literacy materials and education; and

(vi) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(g) PERIODIC STUDIES.—The Commission may conduct periodic studies regarding the state of financial literacy in the United States, as the Commission determines appropriate.

SEC. 103. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) ADVISORY COMMITTEES.—The Commission shall establish not fewer than 1 advisory committee, consisting of representatives of lending institutions, financial literacy nonprofit organizations, consumer advocates, State and local governments, and such other individuals that the Commission believes could contribute to the work of the Commission.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 104. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Commission may, without regard to civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by members of the Commission.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 105. TERMINATION.

The Commission shall terminate on September 30, 2013.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this Act, including administrative expenses of the Commission.

Mr ENZI. Mr. President, the U.S. economy is still the greatest economy in the world and our credit markets have helped to make that happen. During the past decade, our credit markets have taken advantage of technology and innovation in order to provide more consumers with more timely credit approvals and with more financing options. Nowhere is there a better example of this than our housing market.

Today, the time it takes to review a mortgage application and approve it has been cut drastically by our financial institutions. Consumers find that they have a wide array of financing options they can choose from to secure the purchase of a home—from fixed-rated loans to variable-rate loans, or even adjustable rate loans. While the wide variety of choices has helped more families to purchase homes in the past decade, even more families could buy homes if they understood how the credit market works.

Although there are many pluses to the expansion of the availability of credit there is also a downside. Individuals may get in over their heads when too much credit is made available to them. In addition, identity theft is a bigger problem than it has been before. Consumers need to educate themselves about the potential problems they might face and how to avoid them. Increasing consumer financial literacy is not just about providing information, however, it is about giving families the proper informational tools so that they can put their financial affairs in order.

Today, my friend and colleague, Senator STABENOW and I are introducing the ''Financial Literacy Community Outreach Act'' to help to bring together all of the federal government's financial literacy programs under one roof.

The Department of Treasury, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Securities and Exchange Commission, the Department of Housing and Urban Development, and the Department of Labor are just a few of the many federal agencies that have established excellent financial literacy programs and initiatives. These programs cover a wide variety of topics ranging from how to save, spend, and invest to programs that provide guidance on how to prepare for retirement, select a pension plan, or purchase a home. Still others help individuals avoid the threat of identity theft.

Unfortunately, consumers attempting to find financial literacy information from the federal government may find that information scattered throughout the government. Our bill would provide a one-stop-shop where consumers could find the appropriate financial literacy programs for their needs. A single web site and a toll-free number will go a long way toward bringing this vital information to the individuals and families who need it.

In addition, the bill establishes the Financial Literacy Commission, a body comprised of the heads of the federal agencies with financial literacy programs. The Commission will ensure that the federal government has a cohesive and coordinated federal policy on financial literacy as it provides Congress with vital information on what can be improved in our government's financial literacy outreach efforts. In addition to the web site and the toll-free number, the Commission will highlight successful public/private partnerships already existing around the country.

One such partnership is thriving in my home state of Wyoming. The Wyoming Partners in HomeBuyer Education, led by the Wyoming Community Development Authority, includes local banks, real estate agents, the University of Wyoming, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development, and Fannie Mae, in the effort to provide distance learning to potential home-buyers through the use of compressed video technology. This training program is perfect for a state like Wyoming in that home-buyers in rural communities have access to all of the essential elements of the home buying experience just like their urban community counterparts.

To date, more than 3,000 individuals have completed the training program and it has led to making the home-buying process easier and more understandable for rural and urban families alike.

I strongly believe that this bill will help millions of families find the appropriate financial literacy materials they need to make better credit and investment decisions.

It is my pleasure to be cosponsoring this bill with Senator STABENOW because of our shared concern about making financial literacy available to more families across the country. In addition, I would like to recognize Senator SARBANES' tremendous effort to focus our attention on financial literacy, both when he was Chairman of the Committee on Banking, Housing and Urban Affairs last year and as Ranking Member of the Committee this year. He has been an extraordinary advocate for this important issue. Chairman SHELBY of the Committee has also recognized the importance of this issue, as just this week, it was the subject of a hearing by the Committee. I look forward to working with my colleagues on the Committee and in the full Senate to ensure that we expand and build upon the government's present financial literacy efforts to help individuals and families increase their knowledge of and access to our credit and investment markets.

By Ms. CANTWELL (for herself and Mr. ENZI):

S. 1533. A bill to prevent the crime of identity theft, mitigate the harm to individuals throughout the Nation who have been victimized by identity theft, and for other purposes; to the Committee on the Judiciary.

Ms. CANTWELL. Mr. President, I rise today to re-introduce legislation critical to helping victims of identity theft. This legislation, the Identity Theft Victims Assistance Act, passed the Senate by unanimous consent in the 107th Congress, and I look forward to its passage again this Congress. Last year, the legislation had strong bipartisan support, as evidenced by the fact that Senator MIKE ENZI is cosponsoring it again. The bill has broad support from law enforcement, consumers' groups, and privacy advocates. Last year, the National Center for the Victims of Crime, the Fraternal Order of Police, Consumers Union, Identity Theft Resource Center, U.S. Public Interest Group, Police Executive Forum, Privacy Rights Clearinghouse, and Amazon.com supported the bill. Twenty-two state Attorneys General signed a letter supporting the legislation.

Identity theft is the fastest-growing crime in the country. The Federal Trade Commission found that complaints of identity theft increased 87 percent between 2001 and 2002, and over 161,000 complaints were received by the agency last year. A July 2003 study by Gartner Inc. found that there was a 79 percent increase in identity theft in the past year alone. Identity theft now accounts for 43 percent of consumer fraud complaints and leads the list of consumer frauds. It is an insidious crime because it often occurs without the victim's knowledge, yet leaves scars on their credit records and reputations that can last for years, and cost thousands of dollars to repair.

The Secret Service has estimated that consumers lose $745 million to the problem each year, and this number is clearly growing as the number of identity thefts increases. When a victim realizes that his or her identity was stolen it's just the beginning of their troubles. The FTC estimates that it costs the average victim $1,000 in long-distance phone calls, notary charges, mailing costs and lost wages to get his or her financial life back in order after an identity thief strikes. The Identity Theft Resources Center estimates that average identity theft victims spend 175 hours to clear their records.

But the costs are not confined to consumers—identity theft hits businesses and the economy, too. Identity theft-related losses suffered by MasterCard and Visa jumped from $79.9 million in 1996 to $144.3 million in 2000. One study estimates that by 2006 identity theft will cost the financial institution sector alone $8 billion per year.

To take just one of many examples from my state, Jenni D'Avis of Mill Creek, Washington, had her Social Security number stolen when a thief took her mail and found the number listed on a letter from her community college. The criminal used the number to obtain a state identification card, and in turn used that to get credit. In just 23 days, the thief ran up $100,000 in bad debt—all in Jenni's name. Once she became aware of the problem, she had to become a ''Nancy Drew,'' and track down information. Businesses were reluctant to give her the information she needed to determine the extent of the problem and clear her name and credit record. She is still repairing the damage.

Sadly, Jenni's story is not unique. Victims of identity theft have difficulty restoring their credit and regaining control of their identity, in part, because they have no simple means to show creditors and credit reporting agencies that they are who they say they are. In order to prove fraud, a victim often needs copies of creditors records, such as applications and information, and records from the companies the identity thief did business with. Ironically, victims have difficulty obtaining these business records because the victim's personal identifying information does not match the information on file with the business.

This bill fixes that problem. The Identity Theft Victims Assistance Act creates a standardized national process for a person to establish he or she is a victim of identity theft for purposes of tracing fraudulent credit transactions and obtaining the evidence to repair them. It requires the Federal Trade Commission to make available a simple certificate that, when notarized, provides certainty to businesses and financial institutions that the person is who they claim to be, is a victim of identity theft, and has filed claims with both local law enforcement and the FTC. With this document in hand, the victim can then obtain from businesses the records they need.

The need for a national system is readily apparent, as identity theft is increasingly a crime that crosses state lines. One of the greatest challenges identity theft presents to law enforcement is that a stolen identity is used to create false identities in many different localities in different states. Although identity theft is a federal crime, most often, state and local law enforcement agencies are responsible for investigating and prosecuting the crimes. Yet law enforcement has yet to fully recognize the serious nature of the problem or to develop a coordinated investigative strategy. For example, in the case of Michael Calip of Centralia, Washington, identity thieves not only ran up $60,000 in debts, they also committed crimes using his name—trashing his credit record and creating a criminal record. Michael tracked the thieves to Wyoming, but had difficulty convincing local authorities there to pursue his case.

My bill for the first time also permits a victim to designate the investigating agency, either local or state law enforcement or federal investigators, to act as their agents in obtaining evidence of identity theft. This both eases the burden on the victim and aids police in investigating suspected identity theft rings. In addition it requires the existing Identity Theft Coordinating Committee to consult with state and local law enforcement agencies.

Acquiring the evidence of the fraudulent use of identity currently can be an enormous and time-consuming problem for victims. The Identity Theft Victims Assistance Act makes this job easier by establishing that any business presented with the FTC certificate identifying the person as a victim of identity theft, together with a police report and a government issued photo ID must deliver copies of all the financial records that document the fraud to the victim within 20 days. This is a critically important change from current law because it guarantees that victims will be able to obtain the evidence they need while also providing businesses more certainty that they are not violating someone's privacy or providing sensitive information to the wrong parties. It also provides new liability protections for businesses that make a good faith effort to assist victims of identity theft.

Of course, the greatest harm to consumers victimized by theft of their identity is often a bad credit rating or a poor credit score that results from fraudulent use of the consumer's identity. According to the FTC, it often takes about a year for people to discover someone is using personal information for fraudulent purposes, allowing significant damage to otherwise stellar credit records. Even after a consumer reports to a credit reporting agency that they have been victimized by identity theft, the consumer often can not get the reporting agencies to block reporting of activities that resulted from the identity theft.

My bill again requires that presentation of the FTC certificate, police report and photo identification establish that the person is in fact a victim of identity theft and requires credit-reporting agencies to block information that appears on a victim's credit report as a result of the identity theft. It also changes current law that requires individuals to bring suit against a credit reporting agency within two years from the time the agency commits a violation of laws on fair reporting of credit. This makes little sense, since it may be years before a misrepresentation comes to the attention of a victim of identity theft. The bill requires that the statute of limitations begin ticking from the time when a consumer discovers or has reason to know that a misrepresentation by a credit reporting agency has occurred.

The bill leaves in place state laws that are more stringent and provides that either federal prosecutors or State Attorneys General may enforce this law.

Jenni and Michael's stories illustrate the unique problems victims of identity theft face. Although penalties exist for identity thieves, no remedies are available for their victims. The scope of the problem is made worse because it's too easy for a criminal to steal someone's identity and cause serious harm before the theft is even discovered. And when these criminals cross state lines, it can be even harder for victims to trace the problem and repair the damage. For these reasons, it's imperative that we pass federal legislation for the victims of identity theft.

The government, creditors and credit reporting agencies have a shared responsibility to assist identity theft victims mitigate the harm that results from frauds perpetrated in the victim's name. We need to build up the law enforcement network, already started by the Federal Trade Commission and other federal agencies under the Identity Theft and Assumption Deterrence Act of 1998. We need to further improve law enforcement coordination, particularly between the various local and state jurisdictions combating identity theft and the associated crimes.

We also need to provide better and timelier information to businesses so they can head off fraud before it happens. That is why my bill also expands the jurisdiction of the interagency coordinating committee established under the Internet False Identification Act of 2000. Currently, the coordination committee has the mandate to study and report to Congress on federal investigation and enforcement of identity theft crimes. The Identity Theft Victims Assistance Act broadens the mandate for the coordinating committee to consider state and local enforcement of identity theft law and specifically requires the committee to examine and recommend what assistance the federal government can provide state and local law enforcement agencies to better coordinate in the battle against identity theft.

Mr. President, there is no doubt about the scope of the problem: identity theft is already a major problem, and it's getting worse. We must provide victims with the tools they need to regain control of their lives. The Identity Theft Victims Assistance of 2003 will help victims of identity theft recover their identity and restore their good credit. I look forward to working with my colleagues to promptly enact this bill into law.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1533

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 ''Identity Theft Victims Assistance Act of 2003''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The crime of identity theft is the fastest growing crime in the United States. According to a recent estimate, 7,000,000 Americans were victims of identity theft in the past year, a 79 percent increase over previous estimates.

(2) Stolen identities are often used to perpetuate crimes in many cities and States, making it more difficult for consumers to restore their respective identities.

(3) Identity theft cost consumers more than $745,000,000 in 1998 and has increased dramatically in the last few years. The credit card industry alone lost an estimated $144.3 million in 2000.

(4) Identity theft is ruinous to the good name and credit of consumers whose identities are misappropriated, and consumers may be denied otherwise deserved credit and may have to spend enormous time, effort, and money to restore their respective identities.

(5) Victims are often required to contact numerous Federal, State, and local law enforcement agencies and creditors over many years as each event of fraud arises.

(6) As of the date of enactment of this Act, a national mechanism does not exist to assist identity theft victims to obtain evidence of identity theft, restore their credit, and regain control of their respective identities.

(7) Victims of identity theft need a nationally standardized means of—

(A) establishing their true identities and claims of identity theft to all business entities, credit reporting agencies, and Federal and State law enforcement agencies;

(B) obtaining information documenting fraudulent transactions from business entities;

(C) reporting identity theft to consumer credit reporting agencies.

(8) One of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes.

(9) Law enforcement, business entities, credit reporting agencies, and government agencies have a shared responsibility to assist victims of identity theft to mitigate the harm caused by any fraud perpetrated in the name of the victims.

SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding after section 1028 the following:

''§ 1028A. Treatment of identity theft mitigation

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'business entity' means any corporation, trust, partnership, sole proprietorship, or unincorporated association, including any financial service provider, financial information repository, creditor (as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), telecommunications, utilities, or other service provider;

''(2) the term 'consumer' means an individual;

''(3) the term 'financial information' means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—

''(A) account numbers and balances;

''(B) nonpublic personal information, as that term is defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

''(C) codes, passwords, social security numbers, tax identification numbers, State identifier numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation;

''(4) the term 'financial information repository' means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person;

''(5) the term 'identity theft' means a violation of section 1028 or any other similar provision of applicable Federal or State law;

''(6) the term 'means of identification' has the same meaning given the term in section 1028;

''(7) the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or with the intent to aid or abet, an identity theft; and

''(8) the terms not defined in this section or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

''(b) INFORMATION AVAILABLE TO VICTIMS.—

''(1) IN GENERAL.—A business entity that possesses information relating to an alleged identity theft, or that has entered into a transaction, provided credit, provided, for consideration, products, goods, or services, accepted payment, otherwise entered into a commercial transaction for consideration with a person that has made unauthorized use of the means of identification of the victim, or possesses information relating to such transaction, shall, not later than 20 days after the receipt of a written request by the victim, meeting the requirements of subsection (c), provide, without charge, a copy of all application and business transaction information related to the transaction being alleged as an identity theft to—

''(A) the victim;

''(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim in such a request; or

''(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

''(2) RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—No provision of Federal or State law prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this section.

''(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this section permits a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

''(c) VERIFICATION OF IDENTITY AND CLAIM.—Unless a business entity, at its discretion, is otherwise able to verify the identity of a victim making a request under subsection (b)(1), the victim shall provide to the business entity—

''(1) as proof of positive identification, at the election of the business entity—

''(A) the presentation of a government-issued identification card;

''(B) if providing proof by mail, a copy of a government-issued identification card; or

''(C) upon the request of the person seeking business records, the business entity may inform the requesting person of the categories of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; and

''(2) as proof of a claim of identity theft, at the election of the business entity—

''(A) a copy of a police report evidencing the claim of the victim of identity theft;

''(B) a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(C) any properly completed affidavit of fact that is acceptable to the business entity for that purpose.

''(d) LIMITATION ON LIABILITY.—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment, to provide information under this section with respect to an individual in connection with an identity theft to other business entities, law enforcement authorities, victims, or any person alleging to be a victim, if—

''(1) the business entity complies with subsection (c); and

''(2) such disclosure was made—

''(A) for the purpose of detection, investigation, or prosecution of identity theft; or

''(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

''(e) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under subsection (b) if, in the exercise of good faith and reasonable judgment, the business entity determines that—

''(1) this section does not require disclosure of the information;

''(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information; or

''(3) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

''(f) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

''(g) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this section, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

''(1) the business entity has made a reasonable diligent search of its available business records; and

''(2) the records requested under this section do not exist or are not available.

''(h) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to provide a private right of action or claim for relief.

''(i) ENFORCEMENT.—

''(1) INJUNCTIVE ACTIONS BY THE ATTORNEY GENERAL.—

''(A) IN GENERAL.—Whenever it appears that a business entity to which this section applies has engaged, is engaged, or is about to engage, in any act or practice constituting a violation of this section, the Attorney General of the United States may bring a civil action in an appropriate district court of the United States to—

''(i) enjoin such act or practice;

''(ii) enforce compliance with this section; and

''(iii) obtain such other equitable relief as the court determines to be appropriate.

''(B) OTHER INJUNCTIVE RELIEF.—Upon a proper showing in the action under subparagraph (A), the court shall grant a permanent injunction or a temporary restraining order without bond.

''(2) ADMINISTRATIVE ENFORCEMENT.—

''(A) FEDERAL TRADE COMMISSION.—

''(i) IN GENERAL.—Except to the extent that administrative enforcement is specifically committed to another agency under subparagraph (B), a violation of this section shall be deemed an unfair or deceptive act or practice in violation of the Federal Trade Commission Act (15 U.S.C. 41 et seq.), for purposes of the exercise by the Federal Trade Commission of its functions and powers under that Act.

''(ii) AVAILABLE FUNCTIONS AND POWERS.—All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this section.

''(B) OTHER FEDERAL AGENCIES.—Compliance with any requirements under this section may be enforced—

''(i) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818)—

''(I) by the Office of the Comptroller of the Currency, with respect to national banks, and Federal branches and Federal agencies of foreign banks (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

''(II) by the Board of Governors of the Federal Reserve System, with respect to member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.);

''(III) by the Board of Directors of the Federal Deposit Insurance Corporation, with respect to banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

''(IV) by the Director of the Office of Thrift Supervision, with respect to savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

''(ii) by the Board of the National Credit Union Administration, under the Federal Credit Union Act (12 U.S.C. 1751 et seq.), with respect to any federally insured credit union, and any subsidiaries of such credit union;

''(iii) by the Securities and Exchange Commission, under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), with respect to any broker or dealer;

''(iv) by the Securities and Exchange Commission, under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), with respect to investment companies;

''(v) by the Securities and Exchange Commission, under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), with respect to investment advisers registered with the Commission under such Act;

''(vi) by the Secretary of Transportation, under subtitle IV of title 49, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

''(vii) by the Secretary of Transportation, under part A of subtitle VII of title 49, with respect to any air carrier or any foreign air carrier subject to that part; and

''(viii) by the Secretary of Agriculture, under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), except as provided in section 406 of that Act (7 U.S.C. 226, 2271), with respect to any activities subject to that Act.

''(C) AGENCY POWERS.—

''(i) IN GENERAL.—A violation of any requirement imposed under this section shall be deemed to be a violation of a requirement imposed under any Act referred to under subparagraph (B), for the purpose of the exercise by any agency referred to under subparagraph (B) of its powers under any such Act.

''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a Federal agency from exercising the powers conferred upon such agency by Federal law to—

''(I) conduct investigations;

''(II) administer oaths or affirmations; or

''(III) compel the attendance of witnesses or the production of documentary or other evidence.

''(3) PARENS PATRIAE AUTHORITY.—

''(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been, or is threatened to be, adversely affected by a violation of this section by any business entity, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance with this section;

''(iii) obtain damages—

''(I) in the sum of actual damages, restitution, and other compensation on behalf of the affected residents of the State; and

''(II) punitive damages, if the violation is willful or intentional; and

''(iv) obtain such other equitable relief as the court may consider to be appropriate.

''(B) NOTICE.—Before filing an action under subparagraph (A), the attorney general of the State involved shall, if practicable, provide to the Attorney General of the United States, and where applicable, to the appropriate Federal agency with the authority to enforce this section under paragraph (2)—

''(i) a written notice of the action; and

''(ii) a copy of the complaint for the action.

''(4) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice of an action under paragraph (3), the Attorney

General of the United States, and any Federal agency with authority to enforce this section under paragraph (2), shall have the right to intervene in that action.

''(B) EFFECT OF INTERVENTION.—Any person or agency under subparagraph (A) that intervenes in an action under paragraph (2) shall have the right to be heard on all relevant matters arising therein.

''(C) SERVICE OF PROCESS.—Upon the request of the Attorney General of the United States or any Federal agency with the authority to enforce this section under paragraph (2), the attorney general of a State that has filed an action under this section shall, pursuant to rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Attorney General of the United States or the head of such Federal agency, with a copy of the complaint.

''(5) CONSTRUCTION.—For purposes of bringing any civil action under this subsection, nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

''(A) conduct investigations;

''(B) administer oaths or affirmations; or

''(C) compel the attendance of witnesses or the production of documentary and other evidence.

''(6) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States, or appropriate Federal regulator authorized under paragraph (2), for a violation of this section, no State may, during the pendency of that action, institute an action under this section against any defendant named in the complaint in that action for such violation.

''(7) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under this subsection may be brought in the district court of the United States—

''(i) where the defendant resides;

''(ii) where the defendant is doing business; or

''(iii) that meets applicable requirements relating to venue under section 1391 of title 28.

''(B) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

''(i) resides;

''(ii) is doing business; or

''(iii) may be found.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

''1028A. Treatment of identity theft mitigation.''.

SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

(a) CONSUMER REPORTING AGENCY BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681*i*) is amended by adding at the end the following:

''(e) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

''(1) BLOCK.—Except as provided in paragraphs (4) and (5) and not later than 30 days after the date of receipt of—

''(A) proof of the identity of a consumer; and

''(B) an official copy of a police report evidencing the claim of the consumer of identity theft,

a consumer reporting agency shall block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported.

''(2) REINVESTIGATION.—A consumer reporting agency shall reinvestigate any information that a consumer has requested to be blocked under paragraph (1) in accordance with the requirements of subsections (a) through (d).

''(3) NOTIFICATION.—A consumer reporting agency shall, within the time period specified in subsection (a)(2)(A)—

''(A) provide the furnisher of the information identified by the consumer under paragraph (1) with the information described in subsection (a)(2); and

''(B) notify the furnisher—

''(i) that the information may be a result of identity theft;

''(ii) that a police report has been filed;

''(iii) that a block has been requested under this subsection; and

''(iv) of the effective date of the block.

''(4) AUTHORITY TO DECLINE OR RESCIND.—

''(A) IN GENERAL.—A consumer reporting agency may at any time decline to block, or may rescind any block, of consumer information under this subsection if—

''(i) in the exercise of good faith and reasonable judgment, the consumer reporting agency finds that—

''(I) the block was issued, or the request for a block was made, based on a misrepresentation of fact by the consumer relevant to the request to block; or

''(II) the consumer knowingly obtained possession of goods, services, or money as a result of a transaction for which a block has been requested, or the consumer should have known that the consumer obtained possession of goods, services, or money as a result of a transaction for which a block has been requested; or

''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified, in the same manner and within the same time period as consumers are notified of the reinsertion of information under subsection (a)(5)(B).

''(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the transaction that was blocked.

''(5) EXCEPTION.—A consumer reporting agency shall not be required to comply with this subsection when such agency is issuing information for authorizations, for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

''(A) dishonored checks;

''(B) accounts closed for cause;

''(C) substantial overdrafts;

''(D) abuse of automated teller machines; or

''(E) other information which indicates a risk of fraud occurring.''.

(b) FALSE CLAIMS.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

''(j) Any person who knowingly falsely claims to be a victim of identity theft for the purpose of obtaining the blocking of information by a consumer reporting agency under section 611(e)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681*i*(e)(1)) shall be fined under this title, imprisoned not more than 3 years, or both.''.

(c) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

''SEC. 618. JURISDICTION OF COURTS; LIMITATION ON ACTIONS.

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), an action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than 2 years from the date of the defendant's violation of any requirement under this title.

''(b) WILLFUL MISREPRESENTATION.—In any case in which the defendant has materially and willfully misrepresented any information required to be disclosed to an individual under this title, and the information misrepresented is material to the establishment of the liability of the defendant to that individual under this title, an action to enforce a liability created under this title may be brought at any time within 2 years after the date of discovery by the individual of the misrepresentation.

''(c) IDENTITY THEFT.—An action to enforce a liability created under this title may be brought not later than 5 years from the date of the defendant's violation if—

''(1) the plaintiff is the victim of an identity theft; or

''(2) the plaintiff—

''(A) has reasonable grounds to believe that the plaintiff is the victim of an identity theft; and

''(B) has not materially and willfully misrepresented such a claim.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect 2 years from the date of enactment of this Act.

SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP; TERM.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) in subsection (b), by striking ''and the Commissioner of Immigration and Naturalization'' and inserting ''the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service,''; and

(2) in subsection (c), by striking ''2 years after the effective date of this Act.'' and inserting ''on December 28, 2005.''.

(b) CONSULTATION.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) CONSULTATION.—In discharging its duties, the coordinating committee shall consult with interested parties, including State and local law enforcement agencies, State attorneys general, representatives of business entities (as that term is defined in section 4 of the Identity Theft Victims Assistance Act of 2003), including telecommunications and utility companies, and organizations representing consumers.''.

(c) REPORT DISTRIBUTION AND CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by subsection (b)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the coordinating committee, shall report on the activities of the coordinating committee to—

''(A) the Committee on the Judiciary of the Senate;

''(B) the Committee on the Judiciary of the House of Representatives;

''(C) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(D) the Committee on Financial Services of the House of Representatives.'';

(2) in subparagraph (E), by striking ''and'' at the end; and

(3) by striking subparagraph (F) and inserting the following:

''(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies to address identity theft;

''(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft; and

''(H) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—

''(i) facilitate more effective investigation and prosecution of cases involving—

''(I) identity theft; and

''(II) the creation and distribution of false identification documents;

''(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies; and

''(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person.''.

Mr. ENZI. Mr. President, every morning, from the time we wake up to the time we turn out the lights and go to sleep, we all spend a good portion of our day in cyberspace. Probably without thinking, each time we head out to the internet, we broadcast some very specific information about our lives as we use our computers for email. Each time we use our cell phones we rely on a sense of privacy about the information we convey, which may not be present. And, when we use hand held devices to send quick messages back and forth to friends, coworkers and family we assume no one else is listening or receiving our information, which often includes social security numbers, family names and even credit card and pin numbers.

Cyberspace is a high tech criminal's dream and it has helped contribute to the fastest growing crime in America—identity theft.

Simply put, identity theft is the ability to impersonate someone else and steal their credit, their money and even their identity for their own use.

Although the use of high-tech devices has certainly contributed to the proliferation of identity theft, many individuals have been victimized by simple criminals who have carefully picked through trash cans and mailboxes to find old receipts and social security numbers. Regardless of the medium through which the information is collected, identity theft is the result of criminals who have learned how to manipulate a growing network of information—some public, some private—and then use that data to their own advantage.

The problem with identity theft is that it is not confined to one state. It affects Americans from every walk of life from coast to coast. Some Americans may discover that someone else has been using their social security number to obtain fraudulent employment, while others learn that people have been using fraudulent identification cards to obtain lines of credit and then leaving innocent victims to deal with the bills they left behind.

People from small States like Wyoming are not immune to this new crime wave. Although there are only 493,000 people in Wyoming, we have the same rate of identity theft per capita as is present anywhere else in the United States. That is why we have to approach this issue from every angle, taking a systemic approach that includes prevention, enforcement and assistance to victims of identity theft.

Today, we will take the first step with victim's assistance for this crime. I believe we have to provide some real options for our constituents who are trying to recover from the trauma that identity theft has caused in their lives. That is why my colleague from Washington and I are introducing legislation that will make it easier for victims to get the information they need to begin reversing the damage and lasting effects of this crime. Our bill, the Identity Theft Victim's Assistance Act of 2003, is very similar to a bill we offered last year that passed the Senate unanimously in November. I expect and hope for the same result this year since this is a growing problem and the need for action on this issue grows more urgent with each passing day.

Our bill includes key provisions that would allow victims to work with businesses to obtain information related to cases of identity theft and then contact credit reporting agencies to block false information on credit reports. In drafting this legislation we worked with all of the stakeholders to ensure a balance between the needs of consumers and the needs of small businesses, banks and other credit agencies.

The reintroduction of this bill is timely given the recent hearings in the Senate Banking and Commerce Committees and recent action by both the House and Administration.

Earlier this month, the House Financial Services Subcommittee reported a bill called the Fair and Accurate Credit Transactions Act. Also known as the FACT Act, the bill includes a provision nearly identical to Section 4 of our bill. Section 4 of our bill requires consumer credit reporting agencies to block information that appears on a victim's credit report as a result of identity theft, provided the victim did not knowingly obtain goods, services or money as a result of the blocked transaction.

Our provision, which amends the Fair Credit Reporting Act, was also addressed in a recent hearing before the Senate Banking Committee. On July 10, the Chairman of the Federal Trade Commission testified that ''blocking would mitigate the harm to consumers' credit record that can result from identity theft'' and recommended that this practice be codified.

I am also encouraged by similar recommendations from the Treasury Department that would require credit reporting agencies to cease reporting allegedly fraudulent account information on consumer reports when the consumer submits a police report or similar document, unless there is a reason to believe the report is false.

Providing consumers with the tools necessary to recover from identity theft is the first step in providing real relief to the hundreds of thousands of individuals whose lives have already been turned upside down by identity theft. I urge my colleagues to work with me as we move forward on this important issue and make progress on the reauthorization of critical legislation like the Fair Credit Reporting Act. We must take action this year before the crime of identity theft hurts the hundreds of thousands of working people and families who are expected to become victims this year.

By Mr. REID:

S. 1534. A bill to limit the closing and consolidation of certain post offices in rural communities, and for other purposes; to the Committee on Governmental Affairs.

Mr. REID. Mr. President, I am pleased today to introduce the Rural Post Office and Community Preservation Act of 2003.

My legislation would prohibit the Postal Service from closing post offices in our Nation's small rural communities. Where the Postal Service has closed a rural post office, my legislation directs the Postal Service to provide a plan for the rehabilitation and economic development of such closed offices in consultation with the local community affected. It also authorizes $10 million in grants to local communities to assist in such rehabilitation. Finally, it provides that the Postal Service shall transfer the closed post office in Ely, NV, to White Pine County for such rehabilitation.

All across the Nation, the Postal Service is closing, consolidating, and moving post offices in our rural communities. Oftentimes, the Postal Service sells off centrally located and in many cases historic post offices in favor of moving the office to cheaper land on the outskirts of town. While this may result in a short-term economic gain to the Postal Service, there is both an immediate and long-term negative impact on the community.

A 1993 study by the National Trust for Historic Preservation tells us what we intuitively already know. That is, in rural communities, the post office is often the economic and social anchor of the town. When post offices are closed in our rural communities, nearby businesses suffer and the small-town character of the community is diminished.

Nevada knows the harm caused by closing rural post offices first hand.

Take the small town of Ely, NV, where roughly 3,700 Nevadans make their home. Located in northeastern Nevada, Ely is a charming small town surrounded by beautiful mountains and the cleanest air in America. Decades ago, Ely was a main stopover for public officials and movie stars alike as they traveled through the West, and was briefly the hometown of Pat Ryan who later became Pat Nixon, the First Lady of the United States, At the time, Ely's six-story Hotel Nevada was the tallest structure in the whole State of Nevada. Near the Hotel Nevada, Ely had a quaint post office that helped form the center of town. Today if you go to Ely, you will still find the Hotel Nevada. The mountains are just as beautiful. But you won't find the Ely Post Office in the center of town. Last year, over my objection and the objection of the people of Ely, the Postal Service closed the office.

My legislation introduced today would help prevent future rural post office closings like the one in Ely. It would also give the closed post office in Ely to the local community.

My legislation is not intended to be a criticism of the Postal Service. Many fine men and women work there. In fact, my bill is really a testament to the importance of our post offices and the Postal Service. It recognizes that over the history of our Nation, post offices have come to symbolize and offer more than just the practical service of keeping people in touch with friends and families in distant locales. Increasingly, the local post office has become the heart of the community, a place where people within small rural communities keep in touch with one and other.

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. 1534

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 ''Rural Post Office and Community Preservation Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) a 1993 study by the National Trust for Historic Preservation found that approximately 80 percent of people in small communities plan their trips around a visit to a post office;

(2) the Postal Service is increasingly closing small, rural post offices in the center of town and replacing such services with more distant post offices on the outskirts of such communities; and

(3) closing post offices in the centers of small, rural communities removes the hub of such communities and has a deleterious effect on the economies and quality of life in such communities.

(b) PURPOSE.—It is the purpose of this Act to limit the closure of centrally located rural post offices, and to enhance the economic health and quality of life of rural communities.

SEC. 3. MAINTAINING CENTRALLY LOCATED RURAL POST OFFICES.

Section 404(b) of title 39, United States Code, is amended by adding at the end the following:

''(3)(A) In this paragraph, the term 'rural community' means a city, town, or unincorporated area with a population of not more than 20,000 people.

''(B) The Postal Service may not make a determination to close or consolidate a post office in a rural community, unless the Postal Service makes a determination that such closing or consolidation will have a positive economic impact on that community and enhance the quality of life in that community.

''(C) In making a determination under subparagraph (B), the Postal Service shall presume that the relocation of a centrally located post office in a rural community to the boundaries of that community will have a negative economic impact on that community and will not enhance the quality of life in that community.

''(D) If the Postal Service makes a determination to close or consolidate a post office in a rural community, the Postal Service shall develop a plan, in consultation with people in the rural community, to provide for the rehabilitation and use of the post office for purposes favored by the people of that community. Such plan shall be developed before the closing or consolidation takes effect.''.

SEC. 4. GRANTS FOR REHABILITATION OF POST OFFICES IN RURAL COMMUNITIES.

(a) DEFINITION.—In this section, the term 'rural community' means a city, town, or unincorporated area with a population of not more than 20,000 people.

(b) GRANTS.—The Postal Service may award grants to State and local governments, private organizations, or individuals to provide for the rehabilitation of any closed post office in a rural community.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for each of fiscal years 2003 through 2007 to carry out this section.

SEC. 5. TRANSFER OF CLOSED POST OFFICE IN ELY, NEVADA.

The Postal Service shall transfer the real property (including all buildings and improvements) located at 415 5th Street in Ely, Nevada, and occupied by the closed post office, to the local county government of Ely County, Nevada.

By Mr. LEVIN (for himself and Ms. COLLINS):

S. 1535. A bill to amend title 23, United States Code, to establish programs to facilitate international and interstate trade; to the Committee on Environment and Public Works.

Mr. LEVIN. Mr. President, I am introducing today, with Senator COLLINS, the National Highway Borders and Trade Act. As a resident of the State of Michigan, the primary gateway for U.S.-Canadian trade, I am familiar with the pressures being placed on our Nation's highways, especially the major trade corridors. Six years ago Congress recognized the need for highway programs dedicated to interregional and international trade corridors. Since then the funds provided under the Borders and Corridors programs have helped make improvements to thousands of highway miles.

Although much progress has been made in improving transportation efficiencies, the Nation's freight infrastructure needs additional improvements. Increased international trade has put strains on the highway system that carries 70 percent of the total goods shipped in the United States and the total freight traffic is expected to more than double by the year 2020. When the Federal Highway Administration studied border crossing times for trucks in 2001 it found that some trucks experienced delays of over 83 minutes. These delays pose significant obstacles to industries dependent on just-in-time deliveries.

The National Highway Borders and Trade Act of 2003 will help reduce border crossing times and improve the highway corridors important for international and interstate commerce. Although there are only fifteen land border States, the goods that arrive via those States eventually travel to every one of the contiguous U.S. States plus Alaska. So our bill will benefit all 50 States.

The National Highway Borders and Trade Act reflects the growth in international trade and highway traffic being experienced by many States. It would increase funding for these programs and authorize $400 million a year for 6 years for the combined programs. To ensure more stability and predictability for states' border region projects, it would make the existing borders program half formula based and half discretionary.

The National Highway Borders and Trade Act also clarifies which other roads are eligible for funding to help State transportation departments plan for and manage highway commercial traffic in borders regions. Using he definition of ''borders region'' adopted by international law, roads that go through any border region would be eligible for funding.

Eligibility for funding under the Borders program will also be broadened to include certain projects in Canada or Mexico, something that many State departments of transportation have been urging for some time. By placing inspection stations and other facilities in our neighboring countries, we can more efficiently manage border traffic and check for dangerous materials before vehicles enter our country. This will also help facilitate establishing reverse customs inspection at certain border crossings.

Our bill will also help to relieve congestion and delays at the border. According to the Federal Highway Administration, congestion at border crossings can lead to long delays. The lost productivity from this congestion has a negative impact on the Nation's economy. It also causes environmental problems in the border regions. We need to get people and commerce across the borders more quickly and with greater safety.

The bill would also focus the corridors program on roads connecting to a land border and expand it to allow for funding for road connectors to water ports that accept international trade.

These changes will increase the number of eligible roads but also preserve the purpose of the program as facilitating international trade. Water ports play a very important role in international trade. For many sectors of the economy the vast majority of their supplies travels through these ports. The growth in truck traffic at the intermodal ports is taking a toll on the connecting highways. Many of these intermodal road connectors are in a state of severe deterioration.

Through TEA–21, 41 States have received funding from the corridors program. Because goods imported from Canada and Mexico end up in virtually every place in the U.S., improving the Borders and Corridors program will benefit every State and the nation's economy as a whole. Our bill will grant eligibility to roads in all 50 States.

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:

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 ''National Highway Borders and Trade Act of 2003''.

SEC. 2. COORDINATED BORDER INFRASTRUCTURE PROGRAM.

Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 165. Coordinated border infrastructure program

''(a) DEFINITIONS.—In this section:

''(1) BORDER REGION.—The term 'border region' means the portion of a border State that is located within 100 kilometers of a land border crossing with Canada or Mexico.

''(2) BORDER STATE.—The term 'border State' means any State that has a boundary in common with Canada or Mexico.

''(3) COMMERCIAL VEHICLE.—The term 'commercial vehicle' means a vehicle that is used for the primary purpose of transporting cargo in international or interstate commercial trade.

''(4) PASSENGER VEHICLE.—The term 'passenger vehicle' means a vehicle that is used for the primary purpose of transporting individuals.

''(b) PROGRAM.—The Secretary shall establish and implement a coordinated border infrastructure program under which the Secretary shall make allocations to border States for projects within a border region to improve the safe movement of people and goods at or across the border between the United States and Canada and the border between the United States and Mexico.

''(c) ELIGIBLE USES.—Allocations to States under this section may only be used in a border region for—

''(1) improvements to transportation and supporting infrastructure that facilitate cross-border vehicle and cargo movements;

''(2) construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements relating to international trade;

''(3) operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross-border vehicle and cargo movement;

''(4) international coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross-border vehicle and cargo movements;

''(5) projects in Canada or Mexico proposed by 1 or more border States that directly and predominantly facilitate cross-border vehicle and commercial cargo movements at the international gateways or ports of entry into a border region; and

''(6) planning and environmental studies.

''(d) MANDATORY AND DISCRETIONARY PROGRAMS.—

''(1) MANDATORY PROGRAM.—

''(A) IN GENERAL.—For each fiscal year, the Secretary shall allocate among border States, in accordance with the formula described in subparagraph (B), funds to be used in accordance with subsection (c).

''(B) FORMULA.—Subject to subparagraph (C), the amount allocated to a border State under this paragraph shall be determined by the Secretary, as follows:

''(i) 25 percent in the ratio that—

''(I) the average annual weight of all cargo entering the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

''(II) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico.

''(ii) 25 percent in the ratio that—

''(I) the average trade value of all cargo imported into the border State and all cargo exported from the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

''(II) the average trade value of all cargo imported into all border States and all cargo exported from all border States by commercial vehicle across the international borders with Canada and Mexico.

''(iii) 25 percent in the ratio that—

''(I) the number of commercial vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

''(II) the number of all commercial vehicles annually entering all border States across the international borders with Canada and Mexico.

''(iv) 25 percent in the ratio that—

''(I) the number of passenger vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

''(II) the number of all commercial vehicles annually entering all border States across the international borders with Canada and Mexico.

''(C) DATA SOURCE.—

''(i) IN GENERAL.—The data used by the Secretary in making allocations under paragraph (1) shall be based on the Bureau of Transportation Statistics Transborder Surface Freight Dataset (or other similar database).

''(ii) BASIS OF CALCULATION.—All formula calculations shall be made using the average values for the most recent 5-year period for which data are available.

''(D) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), for each fiscal year, each border State shall receive at least ½ of 1 percent of the funds made available for allocation under this paragraph for the fiscal year.

''(2) OTHER FACTORS.—

''(A) IN GENERAL.—In addition to funds provided under paragraph (1), the Secretary shall select and make allocations to border States under this paragraph based on the factors described in subparagraph (B).

''(B) FACTORS.—The factors referred to in subparagraph (A) are, with respect to a project to be carried out under this section in a border State—

''(i) any expected reduction in, or improvement in the reliability of, commercial and other motor vehicle travel time through an international border crossing as a result of the project;

''(ii) strategies to increase the use of underused border crossing facilities and approaches;

''(iii) leveraging of Federal funds provided under this section, including—

''(I) the use of innovative financing;

''(II) the combination of those funds with funding provided for other provisions of this title; and

''(III) the combination of those funds with funds from other Federal, State, local, or private sources;

''(iv)(I) the degree of multinational involvement in the project; and

''(II) demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico;

''(v) the degree of demonstrated coordination with Federal inspection agencies;

''(vi) the extent to which the innovative and problem-solving techniques of the proposed project would be applicable to other border stations or ports of entry;

''(vii) demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs; and

''(viii) such other factors as the Secretary determines to be appropriate to promote border transportation efficiency and safety.

''(e) COST SHARING.—The Federal share of the cost of a project carried out using funds allocated under this section shall not exceed 80 percent.

''(f) TRANSFER OF FUNDS TO THE ADMINISTRATOR OF GENERAL SERVICES.—

''(1) IN GENERAL.—At the request of a State, funds allocated to the State under this section shall be transferred to the Administrator of General Services for the purpose of funding a project under the administrative jurisdiction of the Administrator in a border State if the Secretary determines, after consultation with the State transportation department, as appropriate, that—

''(A) the Administrator should carry out the project; and

''(B) the Administrator agrees to use the funds to carry out the project.

''(2) NO AUGMENTATION OF APPROPRIATIONS.—Funds transferred under paragraph (1) shall not be deemed to be an augmentation of the amount of appropriations made to the General Services Administration.

''(3) ADMINISTRATION.—Funds transferred under paragraph (1) shall be administered in accordance with the procedures applicable to the General Services Administration, except that the funds shall be available for obligation in the same manner as other funds apportioned under this chapter.

''(4) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the Administrator of General Services in the same manner and amount as funds are transferred for a project under paragraph (1).

''(g) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $200,000,000 for each of fiscal years 2004 through 2009, of which—

''(A) $100,000,000 shall be used to carry out subsection (d)(1); and

''(B) $100,000,000 shall be used to carry out subsection (d)(2).

''(2) OBLIGATION AUTHORITY.—Funds made available to carry out this section shall be available for obligation as if the funds were apportioned in accordance with section 104.

''(3) EXCLUSION FROM CALCULATION OF MINIMUM GUARANTEE.—The Secretary shall calculate the amounts to be allocated among the States under section 105 without regard to amounts made available to the States under this subsection.''.

SEC. 3. NATIONAL TRADE CORRIDOR PROGRAM.

Subchapter I of chapter 1 of title 23, United States Code (as amended by section 2), is amended by adding at the end the following:

''§ 166. National trade corridor program

''(a) DEFINITION OF INTERMODAL ROAD CONNECTOR.—In this section, the term 'intermodal road connector' means a connector highway that provides motor vehicle access between a route on the National Highway System and 1 or more major intermodal water port facilities at least 1 of which accepts at least 50,000 20-foot equivalent units of container traffic (or 200,000 tons of container or noncontainer traffic) per year of international trade or trade between Alaska or Hawaii and the 48 contiguous States.

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a program to allocate funds to States to be used for coordinated planning, design, and construction of corridors of national significance.

''(2) APPLICATIONS.—A State that seeks to receive an allocation under this section shall submit to the Secretary an application in such form, and containing such information, as the Secretary may request.

''(c) ELIGIBILITY OF CORRIDORS.—The Secretary may make allocations under this section with respect to—

''(1) a high priority corridor in a State—

''(A) that is identified in section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031); and

''(B) any part of which is located in a border region (as defined in section 165(a)); and

''(2) an intermodal road connector.

''(d) ELIGIBLE USES OF FUNDS.—A State may use an allocation under this section to carry out, for an eligible corridor described in subsection (c)—

''(1) a feasibility study;

''(2) a comprehensive corridor planning and design activity;

''(3) a location and routing study;

''(4) multistate and intrastate coordination for each corridor;

''(5) environmental review; and

''(6) construction.

''(e) ALLOCATION FORMULA.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall allocate funds among States under this section in accordance with a formula determined by the Secretary after taking into consideration, with respect to the applicable corridor in the State—

''(A) the average annual weight of freight transported on the corridor;

''(B) the percentage by which freight traffic increased, during the most recent 5-year period for which data are available, on the corridor; and

''(C) the annual average number of tractor-trailer trucks that use the corridor to access other States.

''(2) MAXIMUM ALLOCATION.—Not more than 10 percent of the funds made available for a fiscal year for allocation under this section may be allocated to any State for the fiscal year.

''(f) COORDINATION OF PLANNING.—Planning with respect to a corridor for which an allocation is made under this section shall be coordinated with—

''(1) transportation planning being carried out by the States and metropolitan planning organizations along the corridor; and

''(2) to the extent appropriate, transportation planning being carried out by—

''(A) Federal land management agencies;

''(B) tribal governments; and

''(C) government agencies in Mexico or Canada.

''(g) COST SHARING.—The Federal share of the cost of a project carried out using funds allocated under this section shall not exceed 80 percent.

''(h) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $200,000,000 for each of fiscal years 2004 through 2009.

''(2) OBLIGATION AUTHORITY.—Funds made available to carry out this section shall be available for obligation as if the funds were apportioned in accordance with section 104.''.

SEC. 4. CONFORMING AMENDMENTS.

(a) Section 1101(a) of the Transportation Equity Act for the 21st Century (112 Stat. 111) is amended by striking paragraph (9) and inserting the following:

''(9) COORDINATED BORDER INFRASTRUCTURE PROGRAM AND NATIONAL TRADE CORRIDOR PROGRAM.—For the coordinated border infrastructure program and national trade corridor program under sections 165 and 166, respectively, of title 23, United States Code, $400,000,000 for each of fiscal years 2004 through 2009.''.

(b) Sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (112 Stat. 161) are repealed.

(c) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 164 the following:

''165. Coordinated border infrastructure program.
''166. National trade corridor program.''.

By Mr. EDWARDS (for himself and Mr. JEFFORDS):

S. 1536. A bill to provide for compassionate payments with regard to individuals who contracted human immunodeficiency virus due to the provision of a contaminated blood transfusion, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. I ask unanimous consent that a letter from Sandra Grissom be printed in the RECORD at the end of my bill, the Steve Grissom Relief Fund Act of 2003.

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

CARY, NC,
July 31, 2003.

DEAR SENATOR: The Ricky Ray Hemophilia Relief Fund Act of 1998 compensated individuals with hemophilia who had received contaminated blood products. Unfortunately, it excluded people like my husband, Steven Grissom, who received contaminated blood transfusions while undergoing treatment for leukemia (AML). He died July 31, he was 52. Steven was a veteran, an avid pilot, a loving father, a loyal and honorable husband and a proud American. This year marked our 29th year of marriage, seventeen of which my husband was ill with AIDS. Since his death, I have experienced the deepest sadness I have ever known. He represented the best of mankind. He was everything to me.

For my husband, there were too many trips to the hospital to recall, too many nights when our children and I sat by his bedside, crying, not knowing whether he would open his eyes again, too many pills at incredible cost, too many HMO battles, disabilities, wheelchairs, oxygen . . .

There are many other victims who, like Steven, became infected with HIV from contaminated blood transfusions. They are children, mothers, fathers, husbands, and wives who relied on the federal government to protect the blood supply. Yet a report issued by the Institute of Medicine found that in the 1980's the government failed to do just that. The IOM found that despite warnings from the Centers for Disease Control, the Food and Drug Administration failed to require blood banks to perform screening tests on donated blood and neglected to require proper screening of blood donors. The FDA failed to require the recall of contaminated products, nor did it require that recipients of contaminated blood products be promptly notified so they could prevent passing the virus to their loved ones.

People like us deserve the same consideration given to those in the hemophilia community who suffered the same fate. Congress passed legislation in 1998, to help patients with hemophilia who contracted HIV-tainted blood. Those like Steven who received contaminated blood through transfusions were left out.

My husband may be gone, but I hope that the Steven Grissom Relief Fund Act will be his legacy to the community of Americans with transfusion AIDS, an expression of compassion to a community nearly forgotten.

Sincerely,

SANDRA GRISSOM.

By Mrs. LINCOLN:

S. 1537. A bill to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery; to the Committee on Agriculture, Nutrition, and Forestry.

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

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

S. 1537

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

SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

(a) CONVEYANCE ON CONDITION SUBSEQUENT.—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the ''Secretary''), shall convey to the New Hope Cemetery Association (referred to in this section as the ''association''), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of National Forest System land (including any improvements on the land) that—

(1) is known as ''New Hope Cemetery Tract 6686c'';

(2) consists of approximately 1.1 acres; and

(3) is more particularly described as a portion of the SE ¼ of the NW ¼ of section 30, T. 11, R. 17W, Pope County, Arkansas.

(c) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—The association shall use the parcel conveyed under subsection (a) as a cemetery.

(2) REVERSION.—If the Secretary, after notice to the association and an opportunity

for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association fails to discontinue that use, title to the parcel shall, at the option of the Secretary, revert to the United States, to be administered by the Secretary.

By Mr. REED (for himself, Mr. VOINOVICH, Mr. SARBANES, Ms. SNOWE, Mr. JEFFORDS, Mr. LEVIN, and Mr. HARKIN):

S. 1539. A bill to amend the Federal Water Pollution Control Act to establish a National Clean and Sage Water Fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in the Fund to carry out projects to promote the recovery of waters of the United States from damage resulting from violations of that Act and the Safe Drinking Water Act, and for other purposes; to the Committee on Environment and Public Works.

Mr. REED. Mr. President, we often don't think about how important water is to our everyday lives, for our health and for our economy. As Americans, we take for granted that when we turn on the tap that clean and safe water will flow from the faucet.

Over the last three decades, the United States has made substantial progress in reducing the pollution flowing into our waters and safeguarding drinking water supplies for our communities. Despite our progress, we still face many challenges.

Population growth is increasing demand for water, and pollution from point and nonpoint sources threaten the quality and quantity of water available to us. According to EPA, the overwhelming majority of the population of the United States—218 million people—live within 10 miles of a polluted river, lake, or coastal water. Nearly 40 percent of these waters are not safe for fishing, swimming, boating, drinking water, or other needs. And while overall water pollution levels decreased dramatically over the last 30 years, recent data may be revealing a disturbing trend. Indeed, EPA's most recent National Water Quality Inventory found that the number of polluted rivers and estuaries increased between 1998 and 2000. Water pollution represents a real and daily threat to public health and to the wildlife that depend on clean water.

This year, we are celebrating the Year of Clean Water. To honor our national commitment to reduce the pollution flowing into our waters and provide safe drinking water for our communities, I am introducing the National Clean and Safe Water Fund Act of 2003. The legislation, cosponsored by Senators VOINOVICH, SARBANES, SNOWE, JEFFORDS, LEVIN and HARKIN will create a fund to carry out projects to promote water quality and protect watersheds and aquifers. It would establish a fund whose sole purpose is to advance the restoration of U.S. waters, particularly in the watersheds where these violations occurred. The bill is supported by a wide variety of organizations, including: the Narragansett Bay Commission, the Association of Metropolitan Water Agencies, American Rivers, Environmental Integrity Project, Friends of the Earth, National Audubon Society, Natural Resources Defense Council, The Ocean Conservancy and the U.S. Public Interest Research Group. I asked unanimous consent that the bill and letters of support be included in the record following my statement.

Last year, the Federal Government collected $52 million in civil and criminal penalties from violations of the Clean Water Act and Safe Drinking Water Acts. The money was deposited in the Treasury with no guarantee that the fines collected would be used to correct the water pollution for which the penalties were levied. Our legislation would make these funds available to local communities, tribes, States and non-profit organizations to protect and preserve watersheds and aquifers and to improve water quality.

This legislation would target this money to worthy projects, such as wetland protection and stream buffers to help filter out pathogens and pollutants that contaminate drinking water; land acquisition and conservation easements to protect watershed and aquifers; best management practices to prevent pollution in the first place; and, treatment works to control combined sewer or sanitary sewer overflows. Our legislation will continue progress to reduce the number of impaired waterways in our Nation, and to reduce, or better yet, prevent contamination of groundwater and drinking water sources.

It is imperative that we increase Federal investment in clean water and drinking water infrastructure and devote greater resources and attention to protecting and improving our watersheds and aquifers.

The Congressional Budget Office released a report that estimated the spending gap for clean water needs could reach as high as $388 billion and the spending gap for drinking water needs could reach $362 billion over 20 years. The CBO concluded the current funding from all levels of government and current revenue generated from ratepayers will not be sufficient to meet the Nation's future demand for water infrastructure. Yet, despite these grim statistics, the Federal Government is investing only $1.35 billion in Clean Water infrastructure each year and $850 million in Drinking Water infrastructure. And unfortunately, the President's budget proposes to cut this funding by $500 million this year.

Given the tremendous need in our communities, and the importance of water infrastructure to our economy, it is vital that the Federal Government maintain a strong partnership with States and local governments to avert this massive funding gap. We need to find new funding sources for watershed and aquifer protection. Clean, safe and abundant drinking water can no longer be taken for granted.

The costs of building new reservoirs and treatment facilities threaten to overrun our ability to pay, especially during the current fiscal crisis. Technology also has limitations in its ability to treat polluted water. Many water agencies are focusing on protecting watersheds and aquifers and conserving valuable clean water resources. In my State, the Providence Water Supply Board collects 1 cent per 100 gallons in a water usage tax to fund watershed acquisition. This may be our best and cheapest way to guarantee water quality and quantity.

Congress needs to increase support for efforts to protect our water resources. Polluted runoff from urban and agricultural land is now the most significant source of water pollution in the nation and the greatest threat to our drinking water. Our greatest future gains in pollution control will, therefore, come from reducing non-point source pollution.

There are cost-effective and environmentally sound projects that could help reduce this pollution, but currently, many non-point source projects cannot participate in the State revolving loan programs since they often do not have a guaranteed source of revenue. Also, without making new Federal resources available it is unlikely we will be able support increased investment in green infrastructure projects such as wetland conservation and stream buffers. The legislation that we are introducing today will make greater funding available for water quality projects.

I hope that my colleagues will join Senators VOINOVICH, SARBANES, SNOWE, JEFFORDS, LEVIN, HARKIN and me in supporting this legislation. Creating this fund will help further the Nation's goals of providing safe and clean water for our communities and restoring water quality for wildlife.

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

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

S. 1539

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 ''National Clean and Safe Water Fund Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Administrator of the Environmental Protection Agency has determined that more than 40 percent of the assessed water of the United States does not meet applicable water quality standards established by States, territories, and Indian tribes;

(2) the water described in paragraph (1) includes approximately 300,000 miles of rivers and shorelines, and approximately 5,000,000 acres of lakes, that are polluted by sediments, excess nutrients, and harmful microorganisms;

(3) Congress enacted—

(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to maintain the chemical, physical, and biological integrity of water of the United States; and

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to protect public health by regulating the public drinking water supply of the United States;

(4) because criminal, civil, and administrative penalties assessed under the Acts referred to in paragraph (3) are returned to the Treasury, those amounts are not available to protect, preserve, or enhance the quality of water in watersheds in which violations of those Acts occur; and

(5) the establishment of a national clean and safe water fund would help States in achieving the goals described in paragraph (1) by providing funding to protect and improve watersheds and aquifers.

SEC. 3. NATIONAL CLEAN AND SAFE WATER FUND.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

''(h) NATIONAL CLEAN AND SAFE WATER FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund to be known as the 'National Clean and Safe Water Fund' (referred to in this subsection as the 'Fund') consisting of amounts transferred to the Fund under paragraph (2) and amounts credited to the Fund under paragraph (3).

''(2) TRANSFER OF AMOUNTS.—Notwithstanding any other provision of law, for fiscal year 2003 and each fiscal year thereafter, the Secretary of the Treasury shall transfer to the Fund an amount determined by the Secretary to be equal to the total amount deposited in the general fund of the Treasury in the preceding fiscal year from fines, penalties, and other funds collected as a result of enforcement actions brought under this section, section 505(a)(1), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.), excluding any amounts ordered to be used to carry out projects in accordance with subsection (d).

''(3) INVESTMENT OF AMOUNTS.—

''(A) IN GENERAL.—The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

''(B) ADMINISTRATION.—The obligations shall be acquired and sold and interest on, and the proceeds from the sale or redemption of, the obligations shall be credited to the Fund in accordance with section 9602 of the Internal Revenue Code of 1986.

''(4) USE OF AMOUNTS FOR WATER QUALITY PROJECTS.—

''(A) IN GENERAL.—Amounts in the Fund shall be available to the Administrator, subject to appropriation, to carry out projects the primary purpose of which is water quality maintenance or improvement, including—

''(i) water conservation projects;

''(ii) wetland protection and restoration projects;

''(iii) contaminated sediment projects;

''(iv) drinking water source protection projects;

''(v) projects consisting of best management practices that reduce pollutant loads in an impaired or threatened body of water;

''(vi) decentralized stormwater or wastewater treatment projects, including low-impact development practices;

''(vii) projects consisting of conservation easements or land acquisition for water quality protection;

''(viii) projects consisting of construction or maintenance of stream buffers;

''(ix) projects for planning, design, and construction of treatment works to remediate or control combined or sanitary sewer overflows; and

''(x) such other similar projects as the Administrator determines to be appropriate.

''(B) LIMITATIONS ON USE OF FUNDS.—Amounts in the Fund—

''(i)(I) shall be used only to carry out projects described in subparagraph (A); and

''(II) shall not be used by the Administrator to pay the cost of any legal or administrative expense incurred by the Administrator (except a legal or administrative expense relating to administration of the Fund); and

''(ii) shall be in addition to any amount made available to carry out projects described in subparagraph (A) under any other provision of law.

''(5) SELECTION OF PROJECTS.—

''(A) PRIORITY.—In selecting among projects eligible for assistance under this subsection, the Administrator shall give priority to a project described in paragraph (4) that is located in a watershed in a State in which there has occurred a violation under this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) for which an enforcement action was brought that resulted in the payment of an amount into the general fund of the Treasury.

''(B) SELECTION CRITERIA.—The Administrator, in consultation with the United States Geological Survey and other appropriate agencies, shall establish criteria that maximize water quality improvement in watersheds and aquifers for use in selecting projects to carry out under this subsection.

''(C) COORDINATION WITH STATES.—In selecting a project to carry out under this subsection, the Administrator shall coordinate with the State in which the Administrator is considering carrying out the project.

''(6) IMPLEMENTATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Administrator may carry out a project under this subsection making grants to—

''(i) another Federal agency;

''(ii) a State agency;

''(iii) a political subdivision of a State;

''(iv) a publicly-owned treatment works;

''(v) a nonprofit entity;

''(vi) a public water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

''(vii) a Federal interstate water compact commission;

''(viii) an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); or

''(ix) a Native Hawaiian (as defined in section 12 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11710)).

''(B) EXCLUSION.—Under subparagraph (A), the Administrator may not make any grant to or enter into any contract with any private entity that is subject to regulation under—

''(i) this Act; or

''(ii) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

''(7) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this subsection and biennially thereafter, the Administrator shall submit to Congress a report that—

''(A) identifies the projects selected for funding under this subsection during the period covered by the report;

''(B) details the selection criteria established under paragraph (5)(B) that were used to select those projects;

''(C) describes the ways in which the Administrator coordinated with States under paragraph (5)(C) in selecting those projects; and

''(D) describes the priorities for use of funds from the Fund in future years in order to achieve water quality goals in bodies of impaired or threatened water.

''(8) NO EFFECT ON OBLIGATION TO COMPLY.—Nothing in this subsection affects the obligation of any person subject to this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to comply with either of those Acts.''.

SEC. 4. USE OF CIVIL PENALTIES FOR REMEDIAL PROJECTS.

(a) IN GENERAL.—Section 309(d) of the Federal Water Pollution Control Act (33 U.S.C. 1319(d)) is amended by inserting after the second sentence the following: ''The court may order that a civil penalty assessed under this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) (other than a civil penalty that would otherwise be deposited in the Oil Spill Liability Trust Fund under section 9509 of the Internal Revenue Code of 1986) be used to carry out 1 or more projects in accordance with clauses (i) through (iv) of subsection (h)(4)(A).''.

(b) CONFORMING AMENDMENT.—Section 505(a) of the Federal Water Pollution Control Act (33 U.S.C. 1365(a)) is amended in the last sentence by inserting before the period at the end the following: '', including ordering the use of a civil penalty for carrying out projects in accordance with section 309(d)''.

ASSOCIATION OF METROPOLITAN WATER AGENCIES,
Washington, DC, July 31, 2003.

Hon. JACK REED,
U.S. Senate,
Washington, DC.

DEAR SENATOR REED: I write today to express the support of the Association of Metropolitan Water Agencies (AMWA) for your National Clean and Safe Water Fund Act of 2003.

AMWA is an association of the nation's largest publicly owned drinking water systems. AMWA members serve safe drinking water to more than 110 million Americans.

Funded with fines collected due to violations of the Clean Water Act and the Safe Drinking Water Act, the National Clean and Safe Water Fund could provide much-needed resources to improve the rivers and lakes that serve as sources of drinking water for millions of Americans.

Agricultural run-off remains the largest contributor of nonpoint source pollution in our nation's waters. According to the Environmental Protection Agency and the U.S. Geological Survey, agricultural pollution—such as siltation, animal waste, pesticides and fertilizers—contributes to 59 percent of reported water quality problems in impaired rivers and streams.

These and other water quality problems in our nation's sources of drinking water could be reduced with the assistance of land acquisition, reduced pollutant loading, wetlands restoration, wastewater treatment works and other projects eligible for funding in the National Clean and Safe Water Fund Act of 2003.

Sincerely,

DIANE VANDE HEI,
Executive Director.

THE NARRAGANSETT BAY COMMISSION,
Providence, RI, July 29, 2003.

Hon. JACK REED,
U.S. Senator, Senate Hart Office Building,
Washington, DC.

DEAR SENATOR REED: On behalf of the Narragansett Bay Commission, I am writing to express support for the Clean and Safe Water Fund Legislation, as proposed by you and Senators Voinovich and Sarbanes.

According to the EPA, the Congressional Budget Office, and the Water Infrastructure Network, the nation faces a funding gap as

high as $46 billion per year for necessary and mandated water and wastewater infrastructure projects. The burden of paying for these mandated projects currently falls almost exclusively on municipalities. This legislation will be an important first step in moving toward a national trust fund for water and wastewater infrastructure.

We applaud you and your fellow Senator for your recognition of the importance of a dedicated funding source for water and wastewater infrastructure and we are pleased to support this bill.

Sincerely,

PAUL PINAULT, P.E.,
Executive Director.

AMERICAN RIVERS ENVIRONMENTAL INTEGRITY PROJECT, FRIENDS OF THE EARTH, NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, THE OCEAN CONSERVANCY, U.S. PUBLIC INTEREST RESEARCH GROUP,

July 2003.

DEAR SENATOR REED: On behalf of our organizations and the millions of members we represent, we are writing to express our support for your new legislation, the National Clean and Safe Water Fund Act of 2003. Currently, funds from violators of the Clean Water Act and Safe Drinking Water Act go into the general Treasury, and are not specifically earmarked for the protection and enhancement of water quality. This legislation would establish a fund whose sole purpose is to advance the restoration of U.S. waters, particularly in the areas in which violations of those acts occur.

This year marks the 30th anniversary of the Clean Water Act, but unfortunately we remain far behind the goals of the authors of the Act. The Environmental Protection Agency acknowledges that over 40 percent of our nation's waters remain unfit for fishing and swimming. We need to do a better job of enforcing the laws that are already on the books, as well as adopting new strategies to ensure that penalties from violations of clean water laws are used to restore the impacted watersheds. The National Clean and Safe Water Fund Act of 2003 outlines many projects for which penalties collected from violators of the Clean Water Act and Safe Drinking Water Act would go towards, including drinking water source protection, wetland protection and restoration, and stormwater and wastewater treatment projects.

We appreciate your leadership in introducing this legislation, and look forward to working with you to see it passed into law.

ELLEN ATHAS,
Director, Clean Oceans Programs, The Ocean Conservancy.
RICHARD CAPLAN,
Environmental Advocate, U.S. Public Interest Research Group.
MICHELE M. MERKEL,
Senior Counsel, Environmental Integrity Project.
BETSY OTTO,
Senior Director, Watersheds Program, American Rivers.
PERRY PLUMART,
Director of Government Relations, National Audubon Society.
NANCY STONER,
Director, Clean Water Project, Natural Resources Defense Council.
SARA ZDEB,
Legislative Director, Friends of the Earth.

By Mr. DASCHLE:

S. 1540. A bill to provide for the payment of amounts owed to Indian Tribes and individual Indian money account holders; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, the legislation I am introducing today should be important to all Americans—Indians and non-Indians alike. The primary goal of the ''Indian Trust Payment Equity Act of 2003'' is to start a process for repaying the debt owed by the United States of America to Indian tribes and individual American Indians.

For over one hundred years, the Department of Interior has managed a trust fund containing the proceeds of leasing of oil, gas, land and mineral rights on Indian land for the benefit of Indian people. Today, far from enjoying a sense of security about the investment of these assets, tribal and individual Indian account holders cannot even be assured of the accuracy of the balances that the Department of Interior claims are in their accounts. It is estimated that the trust fund may owe anywhere from $10 billion to over $100 billion to Indian tribes and Indian people. This is money that everyone agrees is rightfully theirs and desperately needed to address a host of human needs.

There is little disagreement that the Interior Department's stewardship of the trust fund, through administrations of both political parties, has been a colossal failure. Rather than just continue the debate over how best to reorganize the Department of Interior, this legislation is intended to jumpstart the process of repayment by establishing an Equity Payment Trust Fund.

The Indian Trust Payment Equity Act calls for appropriating $10 billion to the Trust Fund over five years, as $10 billion is an undeniably low estimate of what is owed by the United States. If an account holder accepts the results of a certified audit of their account, then the Equity Payment Trust Fund would provide for a partial payment until a full accounting is satisfied. Indian tribes would be able to voluntarily contract with the Secretary to assist in the audit process.

This bill provides a means for tribes to assist individual allottees to obtain an accounting and a more prompt settlement than any proposal put forward to date.

Treaties entered into by the United States constitute a significant element of the law of the land. Unfortunately, the Untied States has abridged its treaty obligations by grossly mismanaging the trust fund it holds as trustee for Indian tribes and people. It is a particularly sad story given the high level of human need that exists on Indian reservations throughout South Dakota and across the country.

Last Friday, Senators MCCAIN, JOHNSON and I introduced S. 1459, ''the American Indian Trust Fund Management Reform Act Amendments Act of 2003.'' We were joined in this effort by Representatives MARK UDALL and NICK RAHALL who introduced the House companion measure, H.R. 2981, that same day. The Indian Trust Payment Equity Act of 2003 is intended to complement S. 1459 and create a multifaceted solution to the underlying problem of trust fund mismanagement.

Restoring accountability and efficiency to trust management, and paying account holders what they are owed, is a matter of fundamental justice. And nowhere do the principles of self-determination and tribal sovereignty come more into play than in the management and distribution of trust funds and assets clearly owed to Indian tribes and Indian people.

It is time to expedite the historical accounting of what is owed and deal with the trust management issue once and for all. This legislation makes a strong statement about the importance of completing the historical accounting and making payments to the tribes and individual Indian allottees who are waiting for what is rightfully theirs. They have waited long enough.

I look forward to comments, suggestions and feedback from those interested in this issue and hope this bill can serve as a basis for serious discussion. I do believe this issue should be of interest and of importance to all Americans and, therefore, all members of Congress, as it addresses a debt and responsibility of the United States. I hope I can count on the support of my Senate colleagues for this effort to address the challenging and complex Indian trust reform issue.

By Mrs. CLINTON (for herself, Mr. ENSIGN, and Mr. BINGAMAN):

S. 1543. A bill to amend and improve provisions relating to the workforce investment and adult education systems of the Nation; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise to announce that today I am introducing The Access to Employment and English Acquisition Act with Senator ENSIGN and Senator BINGAMAN. I am grateful to both Senators for working with me to develop this legislation. I consider them partners in the important effort to expand opportunities for job training for Limited English Proficient individuals. I also want to thank the dedicated individuals at the New York Immigration Coalition, the National Immigration Law Center, the National Council at La Raza and the Immigration Forum for their significant contributions to this proposal.

It is vitally important that our workforce investment system be responsive to the needs of those who do not speak English. Immigrants and Limited English Proficient individuals play a crucial role in the New York State and

U.S. economy. Immigrants account for nearly half of the growth in the civilian labor force between 1990 and 2000 and immigrants are projected to account for all of the growth in the prime-age labor force between 2000 and 2020.

Immigrants fill critical jobs, are the backbone of many industries, and are net contributors to the Nation's tax base. Without current and future immigrants in the workforce, our aging society will be short of workers; short of savings and investment to support national economic growth; and short of tax revenues to finance government services and Social Security outlays.

The Health, Education, Labor and Pensions Committee on which I serve, is in the process of reauthorizing the Workforce Investment (WIA). WIA reauthorization provides a valuable opportunity for Congress to improve our Nation's workforce development system to effectively serve immigrants and persons who are Limited English proficient. And I look forward to working with my colleagues on the HELP Committee to incorporate this legislation into the reauthorization bill.

The Access to Employment and English Acquisition Act will reduce barriers to job training for English language learners by creating incentives for training providers to serve these individuals. It will also make programs that integrate job training and language acquisition more accessible. Employees have found that integrated programs offer a significant return on their investment because they improve productivity, reduce attendance problems, increase job retention rates, and promote overall quality control. Limited English Proficient persons also benefit from integrated training through improved job security, increased job advancement, and a greater ability to participate in society.

There is no question that English proficiency is critical to economic advancement and improved quality of life for LEP workers and their families. Workers who are fluent in oral and written English earn about 24 percent more than those who lack fluency, regardless of their qualifications. These individuals are better able to participate in the civic life of their community, which so many LEP individuals in New York tell me they want to do.

I look forward to continuing the work with Senator ENSIGN and Senator BINGAMAN to improve job training services for immigrants and LEP individuals.

By Mr. FEINGOLD:

S. 1544. A bill to provide for data-mining reports to Congress; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased today to offer the Data-Mining Reporting Act of 2003. The untested and controversial intelligence procedure known as data-mining is capable of maintaining extensive files containing both public and private records on each and every American. Almost weekly, we learn about a new data-mining program under development like the newly named Terrorism Information Awareness program. Congress should not be learning the details about these programs after millions of dollars are spent testing and using data-mining against unsuspecting Americans.

Coupled with the expanded domestic surveillance already undertaken by this Administration, the unchecked development of data-mining is a dangerous step that threatens one of the most important values that we are fighting for in the war against terrorism—freedom. My bill would require all Federal agencies to report to Congress within 90 days and every year thereafter on data-mining programs used to find a pattern indicating terrorist or other criminal activity and how these programs implicate the civil liberties and privacy of all Americans. If it was necessary, information in the various reports would even be classified.

The bill does not end funding for any program, determine the rules for use of the technology or threaten any ongoing investigation that uses data-mining technology. But, with complete information about the current data-mining plans and practices of the Federal Government, Congress will be able to conduct a thorough review of the costs and benefits of the practice of data-mining on a program by program basis and make considered judgments about which programs should go forward and which should not.

My bill would provide Congress with information about the nature of the technology and the data that will be used. The Data-Mining Reporting Act would require all government agencies to assess the efficacy of the data-mining technology and whether the technology can deliver on the promises of each program. In addition, my bill would make sure that the federal agencies using data-mining technology have considered and developed policies to protect the privacy and due process rights of individuals and ensure that only accurate information is collected and used.

Without Congressional review and oversight, government agencies like the Department of Homeland Security, the Department of Justice and the Department of Defense will be able to collect and analyze a combination of intelligence data and personal information like individuals' traffic violations, credit card purchases, travel records, medical records, communications records, and virtually any information contained in commercial or public databases. Through comprehensive data-mining, everything from people's video rentals or drugstore purchases made with a credit card to their most private health records could be fed into a computer and monitored and reviewed by the Federal Government.

Using massive data mining, the government hopes to be able to detect potential terrorists. There is no evidence, however, that data-mining will, in fact, prevent terrorism. Data-mining programs under development are being used to look into the future before being tested to determine if they would have even been able to anticipate past events, like September 11 or the Oklahoma City bombing. Before we develop the ability to feed personal information about every man, woman and child into a giant computer, we should learn what data-mining can and can't do and what limits and protections are needed.

One must also consider the potential for errors in data-mining for example, credit agencies that have data about John R. Smith on John D. Smith's credit report make the prospect of ensnaring many innocents is real.

Most Americans believe that their private lives should remain private. Data-mining programs run the risk of intruding into the lives of individuals who have nothing to do with terrorism but who trust that their credit reports, shopping habits and doctor visits would not become a part of a gigantic computerized search engine, operating without any controls or oversight.

The Administration should be required to report to Congress about the impact of the various data-mining programs now underway or being studied, and the impact those programs may have on our privacy and civil liberties so that Congress can determine whether the proposed benefits of this practice come at too high a price to our privacy and personal liberties.

I urge my colleagues to support this bill. All it asks for is information to which Congress and the American people are entitled.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1544

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 ''Data-Mining Reporting Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) DATA-MINING.—The term ''data-mining'' means a query or search or other analysis of 1 or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initially by another department or agency of the Federal Government for purposes other than intelligence or law enforcement;

(B) the search does not use a specific individual's personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist or other criminal activity.

(2) DATABASE.—The term ''database'' does not include telephone directories, information publicly available via the Internet or available by any other means to any member

of the public without payment of a fee, or databases of judicial and administrative opinions.

SEC. 3. REPORTS ON DATA-MINING ACTIVITIES.

(a) REQUIREMENT FOR REPORT.—The head of each department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology shall each submit a public report to Congress on all such activities of the department or agency under the jurisdiction of that official.

(b) CONTENT OF REPORT.—A report submitted under subsection (a) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(1) A thorough description of the data-mining technology and the data that will be used.

(2) A thorough discussion of the plans for the use of such technology and the target dates for the deployment of the data-mining technology.

(3) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(4) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(5) A list and analysis of the laws and regulations that govern the information to be collected, reviewed, gathered, and analyzed with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(6) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology for data-mining in order to—

(A) protect the privacy and due process rights of individuals; and

(B) ensure that only accurate information is collected and used.

(7) A thorough discussion of the procedures allowing individuals whose personal information will be used in the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology. If no such procedures are in place, a thorough explanation as to why not.

(8) Any necessary classified information in an annex that shall be available to the Committee on Governmental Affairs, the Committee on the Judiciary, and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives.

(c) TIME FOR REPORT.—Each report required under subsection (a) shall be—

(1) submitted not later than 90 days after the date of the enactment of this Act; and

(2) updated once a year and include any new data-mining technologies.

By Mr. HATCH (for himself, Mr. DURBIN, Mr. LUGAR, Mr. LEAHY, Mr. CRAIG, Mr. FEINGOLD, Mr. CRAPO, and Mr. GRASSLEY):

S. 1545. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce legislation that will help make the American dream a reality for many young people. ''The Development, Relief and Education for Alien Minors Act,'' or ''The DREAM Act,'' resolves immigration status problems that plague undocumented immigrants who came to our country as youths. It also removes barriers to education so that they are better equipped to succeed in our society.

Each year, about fifty thousand young undocumented immigrants graduate from high school in the United States. Most of them came to this country with their parents as small children and have been raised here just like their U.S. citizen classmates. They view themselves as Americans, and are loyal to our country. Some may not even realize that they are here in violation of our immigration laws. They grow up to become honest and hard-working adolescents and young adults, and strive for academic as well as professional excellence.

Many of these youngsters find themselves caught in a catch-22 situation. As illegal immigrants, they cannot work legally. Moreover, they are effectively barred from developing academically beyond high school because of the high cost of pursuing higher education. Private colleges and universities are very expensive, and under current federal law, state institutions cannot grant in-state tuition to illegal immigrants, regardless of how long they have resided in that state. To make matters worse, as illegal immigrants, these young people are ineligible for federal tuition assistance. Moreover, these young people have no independent way of becoming legal residents of the United States.

In short, though these children have built their lives here, they have no possibility of achieving and living the American dream. What a tremendous loss to our society.

One young man who is in this predicament lives in my home State of Utah. His name is Danny Cairo. Danny came to the United States at the age of six with his mother who abandoned him eights years later. Danny had to drop out of school in order to support himself. Fortunately, he met Kevin King, who adopted Danny in 2001. With the help of Mr. King, Danny is presently attending the University of Utah.

This story, however, does not necessarily have a happy ending. Because of the date of the adoption, Danny is unable to derive immigration status from Mr. King. He, therefore, lives in legal limbo and faces the threat of deportation daily. In addition, he may never be able to legally work in the United States.

As Mr. King wrote to me, ''Danny is exactly what our country needs more of. He is a natural born leader with charisma and intelligence and a drive that will take him wherever he wants to go. But this will not be possible if Danny is unable to obtain permanent residency.''

Our laws should not discourage those with bright young minds from seeking higher education. We should instead assist and encourage the many ''Dannys'' who are in the United States and who have the dedication and drive to achieve their worthy goals. I am proud that the DREAM Act provides illegal alien children with options for higher education, as well as the opportunity to earn legal residence in the United States.

First, the DREAM Act repeals the provision of Federal law that prevents States from granting in-State tuition to undocumented aliens, leaving this issue at the discretion of the States. My own State of Utah passed a law that will allow in-State tuition for aliens who have been residents in Utah for at least three years. My States have either passed or are considering the passage of similar legislation.

But the fact of the matter is that cheaper tuition at State schools, no matter how beneficial for these young people, will not solve the larger problem: their illegal immigration status. While I do not advocate granting unchecked amnesty to illegal immigrants, I am, however, in favor of providing children—children who did not make the decision to enter the United States illegally—the opportunity to earn the privilege of remaining here legally. The DREAM Act will do just that. It provides young men and women who immigrated to the United States prior to the age of sixteen, who have lived in this country at least five years, and who are of good moral character a chance to earn their conditional resident status upon acceptance by an institution of higher learning or upon graduation from high school. The DREAM Act allows these special young people to pursue their worthy goals and aspirations.

The bill I am introducing today will extend DREAM Act benefits to a group of people who were excluded from a similar bill negotiated during the 107th Congress. Today's bill removes the age ceiling so that no one will be arbitrarily cut-off from benefits. Moreover, while the version from the last Congress requires high school graduation as a provision for obtaining legal status, the bill I am introducing today contains a provision that allows high school students who have been accepted into an institution of higher learning, but who have not yet graduated from high school, to obtain conditional resident status. This provision enables these high school students to get an earlier start on procuring the necessary funds for financing their education.

Of course, we have to be mindful that the opportunity provided by the DREAM Act is a privilege and not an entitlement. We must make sure that those who reap the benefits of the Act are, in fact, worthy of such benefits. For this reason, the bill I am introducing today tightens certain requirements and eliminates waivers for those

who have serious criminal records that would qualify them for deportation.

In addition, while I always want to encourage educational advancement, I recognize that not everyone's circumstances allow for full-time attendance at a four-year college. For this reason, the DREAM Act provides for certain alternatives like attending community college, trade school, serving in our armed forces, or performing community service.

The purpose of the DREAM Act is to create incentives for out-of-status youngsters to achieve as much as they can in life and to contribute to the greatness of the United States. I recognize that if the bill's requirements are so high that they simply operate as barriers to legalizing status, the bill defeats its own stated purpose. That is why I am committed to ensuring that the requirements imposed by this bill are reasonable and can be met by youngsters who are willing to work hard. The DREAM Act will enable youngsters who have ambition and motivation to obtain permanent legal status.

During the 107th Congress, I introduced a version of the DREAM Act, S. 1291. Since then, it has been replaced in favor of the Durbin/Hatch/Kennedy/Brownback substitute. The substitute was put on the Senate calendar but did not receive a vote. The House Judiciary Committee debated identical legislation during the last Congress but it was defeated. The House Judiciary Committee has not yet moved similar legislation this Congress. I want to make sure that the DREAM Act we introduce in the 108th Congress will not die in the hopper as it did in the House last year.

By introducing this bill, I know I am subjecting myself to criticism from both sides of the aisle on my immigration policy. Some proponents of strict immigration enforcement argue that the DREAM Act will encourage illegal entry into the United States. However, the DREAM Act was carefully drafted to avoid this precise problem. The Act specifically limits eligibility to those who entered the United States five years or more prior to the bill's enactment. It applies to a limited number of people who already reside in the United States and who have demonstrated favorable equities in and significant ties to the United States. Anyone who entered the United States less than five years prior to the enactment of this bill or who plans to illegally enter the United States in the future will not be covered by the DREAM Act.

On the other hand, proponents for providing general amnesty contend that there shouldn't be any requirements after high school graduation. I agree that for some of these children, graduation from high school is a grand enough accomplishment in itself. My bill recognizes this achievement by providing these graduates with the reward of conditional resident status so that they may work toward permanent status without fear of deportation.

Nonetheless, some critics argue that most immigrant children cannot go to college, nor can they meet the standards set by the current version of the DREAM Act. They cite statistics showing that only a small percentage of illegal immigrant children ever attend college and they argue that this DREAM bill will benefit very few. What these critics overlook, however, is that without the DREAM Act, illegal immigrant children simply do not have the means nor the incentive to obtain a higher education. Since the DREAM Act will remove substantial obstacles to higher education, I am confident that many of the children who are currently illegal U.S. residents will seek higher education.

Some critics also contained that these immigrant children do not have the aptitude to attend community college or trade school and that even joining the military or performing a few hours a week of community service is out of reach for them. To this criticism I stress that this is not only wholly inaccurate, but it is also an elitist attitude to which I cannot subscribe. Immigrant children, whether legal or otherwise, are no less capable than other children. They just need the opportunity to reach their potential.

I also want to point out that everyone who was eligible for benefits under last year's bill will be eligible again this year. In fact, as I explained earlier, those who were left out of last year's bill are included in this year's bill. The only difference is that now, the applicant has to contribute more to American society before transitioning from conditional resident status to permanent resident status.

I believe the DREAM Act will live up to its name. It will allow these illegal immigrant children the opportunity to not only dream of the infinite possibilities that their futures may hold in the United States, but it will also afford them the opportunity to realize their dreams. With the passage of the DREAM Act, the United States stands to benefit enormously. Once these children become legal residents of this Nation, they will prove to be motivated, hard-working, and educated contributors to our society. I am pleased and proud once again to work with Senator DURBIN on this important legislation.

Mr. DURBIN. Mr. President, today, my colleague Senator HATCH and I are again introducing legislation that would provide immigration relief to undocumented students of good moral character who want to pursue a better life for themselves and their families. It would benefit the American economy by unleashing the potential of these students, who have grown up in the U.S. and graduated from high school or obtained an equivalent degree. The DREAM Act is a bipartisan bill which has broad support in the Hispanic, religious and immigrant communities.

Each year, approximately 50–60,000 undocumented children, including honors students and valedictorians, graduate from our nation's high schools or receive an equivalent degree. Many of these students were brought to the U.S. by their parents at an age when they were too young to appreciate the legal consequences of their actions. Despite long-term residency in the U.S. and a demonstrated commitment to obtaining an education, these students have no avenue for adjusting their immigration status and it is very difficult for them to attend college or work. Instead, they face possible deportation.

Although these young people are entitled to a free public education at the primary and secondary level, Federal law strongly discourages states from extending in-state college tuition rates to them. Additionally, they cannot legally work, are ineligible for federal tuition assistance, and have great difficulty obtaining private loans.

These roadblocks to higher education hurt our society because we are deprived of future leaders, and the increased tax revenues and economic growth they would produce. Young people with great potential and ambitions are limited to the employment options available to those without a college degree. In fact, many of these students do not even finish high school, further limiting their options and ability to contribute to our economy, because they drop out of school once they realize that they will be unable to attend college.

The DREAM Act would provide meaningful relief to many of these students. It would repeal a provision of federal law that makes it prohibitively expensive for states to grant post-secondary benefits, such as in-state tuition rates, to undocumented children. The bill would also provide an earned adjustment mechanism by which young people who are long-term U.S. residents may become lawful permanent residents.

Approving this bill would give accomplished young people the opportunity to pursue the American dream. I urge my colleagues to support it.

By Mr. MCCONNELL (for himself and Mr. LIEBERMAN):

S. 1546. A bill to provide small businesses certain protection from litigation excesses and to limit the product liability of non-manufacturer product sellers; to the Committee on the Judiciary.

Mr. MCCONNELL. Mr. President, today Senator LIEBERMAN and I introduced the ''Small Business Liability Reform Act of 2003,'' which aims to restore common sense to the way our civil litigation system treats small businesses. Small businesses form the backbone of America's economy. But in our legal system, small businesses are often forced to defend themselves in court for actions they did not commit and pay damages for harms they did not cause. These businesses also frequently find themselves faced with extraordinarily high punitive damages awards. These unfortunate realities

threaten the very existence of many small businesses, and when American small businesses go under, our economy is harmed as new products are not developed, produced, or sold, and employers cannot retain employees or hire new ones.

Small businesses—those with 25 or fewer full-time employees—employ almost 60 percent of the American workforce. Because the majority of small business owners earn less than $50,000 a year, they often lack the resources to fight unfair lawsuits which could put them out of business. When faced with such a lawsuit, many of these entrepreneurs must either risk a lengthy battle in court, in which they may be subjected to large damage awards, or settle the dispute out of court for a significant amount. Either way, our current system jeopardizes the livelihood and futures of small business owners and their employees.

The Small Business Liability Reform Act of 2003 would remedy these ills with three common-sense solutions, all of which protect our nation's entrepreneurs from unfair lawsuits and excessive damage awards. First, it would allow a punitive damages award against a small business only upon clear and convincing evidence, rather than upon a simple preponderance of the evidence, and it would set reasonable limits on the size of punitive damages awards—the lesser of $250,000 or three times compensatory damages.

Second, our bill would restore basic fairness to the law by eliminating joint and several liability for small businesses for non-economic damages, such as pain and suffering, so a small defendant is not forced to pay for harms it did not cause. Under the current joint and several liability rules, if a small business is found liable with other defendants, the small business may be forced to pay a disproportionate amount of the damages if it has ''deep pockets'' relative to the other responsible parties. For example, a small business that was found responsible for only 10 percent of the harm in a case may have to pay half, two-thirds or even all of the damages. This legislation would prevent this unfair situation, but it would not change a small business's joint and several liability for economic damages, such as medical expenses and lost wages; because a small business could still be responsible for all economic damages, regardless of its degree of fault, plaintiffs will still be able to recover all of their out of pocket costs. By protecting small businesses from having to pay non-economic damages for which they are not responsible, though, the Small Business Liability Reform Act of 2003 partially relieves a potentially unfair situation.

Third, our bill addresses some of the iniquities facing non-manufacturing product sellers. Currently, a person who has nothing to do with a defective and harmful product other than simply selling it can be sued with the manufacturer. Under the reforms in the Small Business Liability Reform Act of 2003, however, a product seller can only be held liable for harms caused by his own negligence, intentional wrongdoing, or breach of his own warranty.

This bill would provide much needed protection and relief to small business owners, workers, and consumers. By making our legal system reasonable and fair to small businesses, we will remove one of the greatest barriers to starting and maintaining a small business: the threat of crippling, excessive, and unfair lawsuits. That means increased competition, better and more affordable goods, and more jobs at a time when America could use them all. The Small Business Liability Reform Act of 2003 is a win for all Americans, and it is my hope that the Senate will pass this bipartisan bill. Finally, I would ask unanimous consent that letters in support of this legislation from the National Federation of Independent Business, the National Association of Wholesale-Distributors, the Motorcycle Industry Council, and the Small Business Legal Reform Coalition be printed in the RECORD.

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

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

JULY 31, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the Small Business Legal Reform Coalition, we are writing to thank you for sponsoring the Small Business Liability Reform Act of 2003, and to express our strong support for its passage. We commend you for your efforts to restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America's businesses.

The frequency and high cost of litigation is a matter of growing concern to small businesses across the country. Today's civil justice system presents a significant disincentive to business start-ups and continued operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners across the nation risk losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

The Small Business Liability Reform Act of 2003 would make two reforms that have topped the small business community's agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been among the recommendations of the White House Conference on Small Business since the early 1980s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This legislation would also hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers, lessors and renters to lawsuits when they are simply present in a product's chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act of 2003 will inject more fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you again for your support of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

Sincerely,

American Automotive Leasing Association.
American Council of Engineering Companies.
American Insurance Association.
American Machine Tool Distributors Association.
American Rental Association.
Associated Builders and Contractors.
Associated Equipment Distributors.
Automotive Parts and Service Alliance.
Citizens for Civil Justice Reform.
Coalition for Uniform Product Liability Law.
Equipment Leasing Association.
Independent Insurance Agents and Brokers of America.
International Housewares Association.
International Mass Retail Association.
Motorcycle Industry Council.
National Association of Convenience Stores.
National Association of Manufacturers.
National Association of Wholesaler-Distributors.
National Federation of Independent Business.
National Grocers Association.
National Restaurant Association.
National Retail Federation.
National Small Business United.
NPES—Association for Suppliers of Printing, Publishing & Converting Technologies.
Plumbing-Heating-Cooling Contractors—National Association.
Small Business Legislative Council.
Society of Independent Gasoline Marketers of America.
Specialty Equipment Market Association.
Tire Industry Association.
Truck Renting and Leasing Association.
U.S. Chamber of Commerce.

MOTORCYCLE INDUSTRY COUNCIL,
Arlington, VA, July 30, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the over 300 members of the Motorcycle Industry Council (MIC), I want to express our strong support for the ''Small Business Liability Reform Act of 2003'' and extend sincere thanks for your sponsorship of this important legislation. MIC is a nonprofit national trade association that represents manufacturers and distributors of motorcycles, motorcycle parts and accessories, and members of allied trades. A large number of our member companies are small businesses.

This Act, which would cap punitive damages and abolish joint liability for non-economic damages for businesses with fewer than 25 employees, is a common sense approach to sustaining the health of America's small businesses. It would hold non-manufacturing product sellers liable in product liability cases when they own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers to lawsuits when they are simply present in a product's chain of distribution. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

The frequency and high cost of litigation is a matter of great concern to the business community. Few companies have been left unmarked by the steep increases in product liability insurance costs or the crises in the availability of product liability insurance. The impact on small businesses is especially burdensome. the current civil justice system puts small business owners across the country in jeopardy of losing their livelihood, their employees and their futures when faced with involvement in lawsuits through no fault of their own. This Act would serve to help protect these businesses from excessive damage awards and the costs of defending against frivolous suits.

Sensible reform brings predictability to the product liability process, stabilizes product liability insurance rates and reduces the overall costs related to product liability litigation imposed on manufacturers, sellers, and ultimately, consumers. This legislation is an important step in alleviating the devastating effects that the current system can have on small businesses and their millions of employees, which continuing to ensure that businesses remain accountable for negligence and intentional wrongdoing and that consumers have full access to the court system for redress.

Again, thank you for your sponsorship of this legislation which is so important to our small business member companies.

Sincerely,

KATHY R. VAN KLEECK,
Vice President, Government Relations.

NATIONAL ASSOCIATION
OF WHOLESALER-DISTRIBUTORS,
Washington, DC, July 30, 2003.

Hon. MITCH MCCONNELL,
Hon. JOE LIEBERMAN,
U.S. Senate, Washington, DC.

DEAR SENATORS MCCONNELL AND LIEBERMAN: I write on behalf of the National Association of Wholesaler-Distributors (NAW) to express our strong support for the ''Small Business Liability Reform Act of 2003.''

For nearly two decades, NAW has vigorously advocated Federal civil justice reform legislation to curb unnecessary lawsuits and the wasteful legal costs they generate. Title I of the bill (Small Business Lawsuit Abuse Protection), which proposes modest restraints in the application of joint liability and punitive damages with regard to small business defendants, takes a major step in that direction.

So, too, does the product seller liability standard proposed in Title II (Product Seller Fair Treatment). Currently in a majority of states, non-manufacturing product sellers such as wholesaler-distributors and retailers may be sued for product-related injuries on the same basis as the product manufacturer. Consequently, product sellers are routinely joined in product liability lawsuits regardless of fault. Despite the fact that product sellers are rarely ultimately responsible for the damages awarded to successful claimants, they do have to mount their defense and pay the legal costs attendant to it. This unnecessary litigation drives up costs that must be passed along and absorbed by consumers in the form of higher prices, and serves the interests of no one.

By providing that non-manufacturing product sellers will be liable for product-related injuries that are caused by their own negligence, intentional misconduct, beeches of their own express warranties, and when the liable manufacturer is unreachable by judicial process, Title II of the bill corrects this serious flaw in our product liability system. This standard of liability is balanced and fair. It appropriately reflects the different roles of manufacturers, wholesaler-distributors and other non-manufacturing product sellers in the chain of production and distribution, promotes product safety by laying responsibility for harm at the doorstep of the culpable party, and ensures that those who are harmed through no fault of their own by defective, unreasonably dangerous products are fully compensated for their injuries.

Thank you for your leadership in sponsoring this important legislation. I look forward to working with you toward its prompt enactment.

Sincerely,

JAMES A. ANDERSON, Jr.,
Vice President—Government Relations.

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
Washington DC, July 30, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I would like to express our strong support for the Small business Liability Reform Act of 2003. NFIB strongly supports this legislation which would restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America's businesses.

The frequency and high cost of litigation is a matter of growing concern to small businesses across the country. Today's civil justice system presents a significant disincentive to business start-ups and continued operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners across the nation risk losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

This legislation would make two reforms that have topped the small business community's agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been among the recommendations of the White House Conference on Small Business since the early 1980s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This bill would also hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers, lessors and renters to lawsuits when they are simply present in a product's chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act will inject more fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you for your consideration of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

Sincerely,

DAN DANNER,
Senior Vice President,
Public Policy.

S. 1546

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 ''Small Business Liability Reform Act of 2003''.

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

Sec. 1. Short title; table of contents.

TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

Sec. 101. Findings.
Sec. 102. Definitions.
Sec. 103. Limitation on punitive damages for small businesses.
Sec. 104. Limitation on joint and several liability for noneconomic loss for small businesses.
Sec. 105. Exceptions to limitations on liability.
Sec. 106. Preemption and election of State nonapplicability.

TITLE II—PRODUCT SELLER FAIR TREATMENT

Sec. 201. Findings; purposes.
Sec. 202. Definitions.
Sec. 203. Applicability; preemption.
Sec. 204. Liability rules applicable to product sellers, renters, and lessors.
Sec. 205. Federal cause of action precluded.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

SEC. 101. FINDINGS.

Congress finds that—

(1) the United States civil justice system is inefficient, unpredictable, unfair, costly, and impedes competitiveness in the marketplace for goods, services, business, and employees;

(2) the defects in the United States civil justice system have a direct and undesirable effect on interstate commerce by decreasing the availability of goods and services in commerce;

(3) there is a need to restore rationality, certainty, and fairness to the legal system;

(4) the spiralling costs of litigation and the magnitude and unpredictability of punitive damage awards and noneconomic damage awards have continued unabated for at least the past 30 years;

(5) the Supreme Court of the United States has recognized that a punitive damage award can be unconstitutional if the award is grossly excessive in relation to the legitimate interest of the government in the punishment and deterrence of unlawful conduct;

(6) just as punitive damage awards can be grossly excessive, so can it be grossly excessive in some circumstances for a party to be held responsible under the doctrine of joint and several liability for damages that party did not cause;

(7) as a result of joint and several liability, entities including small businesses are often brought into litigation despite the fact that their conduct may have little or nothing to do with the accident or transaction giving rise to the lawsuit, and may therefore face increased and unjust costs due to the possibility or result of unfair and disproportionate damage awards;

(8) the costs imposed by the civil justice system on small businesses are particularly acute, since small businesses often lack the resources to bear those costs and to challenge unwarranted lawsuits;

(9) due to high liability costs and unwarranted litigation costs, small businesses face higher costs in purchasing insurance through interstate insurance markets to cover their activities;

(10) liability reform for small businesses will promote the free flow of goods and services, lessen burdens on interstate commerce, and decrease litigiousness; and

(11) legislation to address these concerns is an appropriate exercise of the powers of Congress under clauses 3, 9, and 18 of section 8 of article I of the Constitution of the United States, and the 14th amendment to the Constitution of the United States.

SEC. 102. DEFINITIONS.

In this title:

(1) CRIME OF VIOLENCE.—The term ''crime of violence'' has the same meaning as in section 16 of title 18, United States Code.

(2) DRUG.—The term ''drug'' means any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) that was not legally prescribed for use by the defendant or that was taken by the defendant other than in accordance with the terms of a lawfully issued prescription.

(3) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(4) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property.

(5) HATE CRIME.—The term ''hate crime'' means a crime described under section 1(b) of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(6) INTERNATIONAL TERRORISM.—The term ''international terrorism'' has the same meaning as in section 2331 of title 18, United States Code.

(7) NONECONOMIC LOSS.—The term ''noneconomic loss'' means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(8) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(9) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person, entity, or others from engaging in similar behavior in the future. Such term does not include any civil penalties, fines, or treble damages that are assessed or enforced by an agency of State or Federal government pursuant to a State or Federal statute.

(10) SMALL BUSINESS.—

(A) IN GENERAL.—The term ''small business'' means any unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has fewer than 25 full-time employees as determined on the date the civil action involving the small business is filed.

(B) CALCULATION OF NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the number of employees of a subsidiary of a wholly owned corporation includes the employees of—

(i) a parent corporation; and

(ii) any other subsidiary corporation of that parent corporation.

(11) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 103. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, punitive damages may, to the extent permitted by applicable Federal or State law, be awarded against the small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) LIMITATION ON AMOUNT.—In any civil action against a small business, punitive damages awarded against a small business shall not exceed the lesser of—

(1) three times the total amount awarded to the claimant for economic and noneconomic losses; or

(2) $250,000,

except that the court may make this subsection inapplicable if the court finds that the plaintiff established by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought.

(c) APPLICATION BY THE COURT.—The limitation prescribed by this section shall be applied by the court and shall not be disclosed to the jury.

SEC. 104. LIMITATION ON JOINT AND SEVERAL LIABILITY FOR NONECONOMIC LOSS FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, the liability of each defendant that is a small business, or the agent of a small business, for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—In any civil action described in subsection (a)—

(A) each defendant described in that subsection shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable; and

(B) the court shall render a separate judgment against each defendant described in that subsection in an amount determined under subparagraph (A).

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the harm to the claimant, regardless of whether or not the person is a party to the action.

SEC. 105. EXCEPTIONS TO LIMITATIONS ON LIABILITY.

The limitations on liability under sections 103 and 104 do not apply—

(1) to any defendant whose misconduct—

(A) constitutes—

(i) a crime of violence;

(ii) an act of international terrorism; or

(iii) a hate crime;

(B) results in liability for damages relating to the injury to, destruction of, loss of, or loss of use of, natural resources described in—

(i) section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)(A)); or

(ii) section 107(a)(4)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)(4)(C));

(C) involves—

(i) a sexual offense, as defined by applicable State law; or

(ii) a violation of a Federal or State civil rights law; or

(D) occurred at the time the defendant was under the influence (as determined under applicable State law) of intoxicating alcohol or a drug, and the fact that the defendant was under the influence was the cause of any harm alleged by the plaintiff in the subject action; or

(2) to any cause of action which is brought under the provisions of title 31, United States Code, relating to false claims (31 U.S.C. 3729 through 3733) or to any other cause of action brought by the United States relating to fraud or false statements.

SEC. 106. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

(a) PREEMPTION.—Subject to subsection (b), this title preempts the laws of any State to the extent that State laws are inconsistent with this title.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This title does not apply to any action in a State court against a small business in which all parties are citizens of the State, if the State enacts a statute—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this title does not apply as of a date certain to such actions in the State; and

(3) containing no other provision.

TITLE II—PRODUCT SELLER FAIR TREATMENT

SEC. 201. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) although damage awards in product liability actions may encourage the production of safer products, they may also have a direct effect on interstate commerce and consumers of the United States by increasing the cost of, and decreasing the availability of, products;

(2) some of the rules of law governing product liability actions are inconsistent within and among the States, resulting in differences in State laws that may be inequitable with respect to plaintiffs and defendants and may impose burdens on interstate commerce;

(3) product liability awards may jeopardize the financial well-being of individuals and industries, particularly the small businesses of the United States;

(4) because the product liability laws of a State may have adverse effects on consumers and businesses in many other States, it is appropriate for the Federal Government to enact national, uniform product liability laws that preempt State laws; and

(5) under clause 3 of section 8 of article I of the United States Constitution, it is the constitutional role of the Federal Government to remove barriers to interstate commerce.

(b) PURPOSES.—The purposes of this title, based on the powers of the United States under clause 3 of section 8 of article I of the United States Constitution, are to promote the free flow of goods and services and lessen the burdens on interstate commerce, by—

(1) establishing certain uniform legal principles of product liability that provide a fair balance among the interests of all parties in the chain of production, distribution, and use of products; and

(2) reducing the unacceptable costs and delays in product liability actions caused by excessive litigation that harms both plaintiffs and defendants.

SEC. 202. DEFINITIONS.

In this title:

(1) ALCOHOL PRODUCT.—The term ''alcohol product'' includes any product that contains not less than ½ of 1 percent of alcohol by volume and is intended for human consumption.

(2) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an

action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) COMMERCIAL LOSS.—The term ''commercial loss'' means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss, the recovery of which is governed by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means damages awarded for economic and noneconomic losses.

(5) DRAM-SHOP.—The term ''dram-shop'' means a drinking establishment where alcoholic beverages are sold to be consumed on the premises.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(8) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who—

(i) is engaged in a business to produce, create, make, or construct any product (or component part of a product); and

(ii)(I) designs or formulates the product (or component part of the product); or

(II) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) that are created or affected when, before placing the product in the stream of commerce, the product seller—

(i) produces, creates, makes, constructs and designs, or formulates an aspect of the product (or component part of the product) made by another person; or

(ii) has engaged another person to design or formulate an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(9) NONECONOMIC LOSS.—The term ''noneconomic loss'' means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(10) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(11) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(12) PRODUCT LIABILITY ACTION.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the term ''product liability action'' means a civil action brought on any theory for a claim for any physical injury, illness, disease, death, or damage to property that is caused by a product.

(B) The following claims are not included in the term ''product liability action'':

(i) NEGLIGENT ENTRUSTMENT.—A claim for negligent entrustment.

(ii) NEGLIGENCE PER SE.—A claim brought under a theory of negligence per se.

(iii) DRAM-SHOP.—A claim brought under a theory of dram-shop or third-party liability arising out of the sale or providing of an alcoholic product to an intoxicated person or minor.

(13) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(14) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 203. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this title governs any product liability action brought in any Federal or State court.

(2) ACTIONS FOR COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes a State law only to the extent that the State law applies to an issue covered by this title. Any issue that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable Federal or State law.

(c) EFFECT ON OTHER LAW.—Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any State law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief, for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8))).

SEC. 204. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action covered under this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A)(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of the harm to the claimant;

(B)(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) the intentional wrongdoing caused the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product, if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant is or would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability

of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) DEFINITION.—For purposes of paragraph (2), and for determining the applicability of this title to any person subject to that paragraph, the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

(2) LIABILITY.—Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 202(13)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of that product.

SEC. 205. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under this title based on section 1331 or 1337 of title 28, United States Code.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act shall take effect with respect to any civil action commenced after the date of the enactment of this Act without regard to whether the harm that is the subject of the action occurred before such date.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1547. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; considered and passed.

Mr. BINGAMAN. Mr. President, last evening, I introduced two bills with Senator DOMENICI and yet another one today to address a technical, but very important problem that the State of New Mexico and a number of other States, including that of the Majority Leader, have faced with respect to the Children's Health Insurance Program, or CHIP. When CHIP was established by President Clinton and the Congress in 1997, an inequity was built into the program whereby certain states that had been more progressive and had expanded coverage to children through Medicaid prior to the enactment of the bill were penalized.

In the last Congress and again this year, I introduced the ''Children's Health Equity Act of 2003'' to address this problem for a number of States, including New Mexico, Vermont, Washington, and Tennessee. Our states have been unable to fully access Federal CHIP funds because the previous expansion of Medicaid to children was not recognized or ''grandfathered,'' while certain other States such as New York, Florida, and Pennsylvania were explicitly ''grandfathered'' in and their State expansions to children were allowed to be covered with CHIP dollars.

The National Governors' Association has long recognized this inequity and has, in fact, a policy that read, ''The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S–CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage to the majority of uninsured children in their states.''

S. 621, the ''Children's Health Equity Act,'' did precisely that and the critical language from our legislation was included in S. 312 by Senators Rockefeller and Chafee, which addressed both expired and expiring CHIP funds and the problem addressed by S. 621. We appreciated their recognition of that issue and supported the passage of that legislation after an extensive set of negotiations and compromises on the language.

For New Mexico, an important issue is that our State expanded coverage up to 185 percent of poverty prior to the enactment of CHIP. Because of this, the children in our State between 100 percent and 185 percent of poverty are ineligible for CHIP. Thus, New Mexico has been allocated $266 million from CHIP between fiscal years 1998 and 2002, and yet has only been able to spend slightly over $26 million as of the end of the last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its Federal CHIP allocations. This, despite the fact our State ranks 2nd in the Nation in the percentage of children who are uninsured.

It is a travesty that money set-aside for New Mexico to address our children's coverage problem is not available to be spent and is thereby redistributed to other States who have far lower uninsured rates and whose children between 100 and 185 percent of poverty are eligible for Federal CHIP dollars. The children in those States are certainly no more worthy of health insurance coverage than the children of New Mexico.

The consequences for the children of New Mexico are enormous. According to the Census Bureau, New Mexico has an estimated 114,000 uninsured children. Put another way, almost 21 percent of all the children in New Mexico are uninsured, despite the fact New Mexico has expanded coverage all the way to 235 percent of poverty. Again, this is the 2nd highest rate of uninsured children in the country.

This is a result of the fact that an estimated 80 percent of the uninsured children in New Mexico are below 200 percent of poverty. These children are often eligible for either Medicaid or CHIP but currently unenrolled. With the exception of those few children between 185 and 200 percent of poverty who are eligible for the enhanced federal CHIP dollars, all of the remaining children below 185 percent of poverty in New Mexico are denied CHIP funding despite their need.

For New Mexico, the Senate language that was in S. 621 and included in S. 312 would have allowed New Mexico to spend up to 20 percent of its Federal CHIP allotments on children enrolled between 150 and 185 percent of poverty. Unfortunately, the House of Representatives chose to modify the Senate language in such a manner through the introduction and passage of H.r. 2854 that New Mexico may no longer be eligible.

The House of Representatives, which did not include language addressing New Mexico's problem in the first place, chose to edit the Senate language that ''grandfathered'' States that had previous expanded coverage ''up to'' 185 percent of poverty and above and replaced it with language that the State had to have expanded coverage to ''at least'' 185 percent of poverty.

This sounds rather technical, but this slight difference may ironically allow all the other states our bill intended to help, who expanded coverage beyond 185 percent of poverty, such as Vermont and Washington, to be ''grandfathered'' but not New Mexico. It is my contention, after reviewing the materials from our State that our State expanded coverage to 185 percent of poverty and operates a full Medicaid benefit at 185 percent of poverty and therefore should qualify as a State to be ''grandfathered.'' Unfortunately, the language change has left the Centers for Medicare and Medicaid Services, or CMS, uncertain of our State's eligibility, as some believe the State has only some up to 185 percent of poverty, or just short of that level, and therefore does not meet the test of ''at least'' 185 percent of poverty.

For six long years, the States of Washington, New Mexico, Vermont, and others have sought to fix the inequity in CHIP. Senator Slade Gorton of Washington had the original legislation to fix this problem and I picked up, modified, and reintroduced that legislation in the last two sessions of Congress. After six long years, to now find that New Mexico may be the only State excluded by the House change and 0.0001 percentage points, is both outrageous and unacceptable.

I contend that the Centers for Medicare and Medicaid Services, or CMS, can still make a determination that New Mexico meets this revised standard under H.R. 2854 and urge them to do so as soon possible.

However, in the meantime, since New Mexico's status is now in question. I introduced two bills last night and another one today with Senator DOMENICI that all clarify that New Mexico qualifies. The first includes New Mexico as a ''qualified state'' explicitly. This would leave no question at all. The second bill clarifies that a State found to be a partial percentage point below 185 percent of poverty would round up to the nearest number, that being 185 percent of poverty, and be eligible. That would also undoubtedly ensure New Mexico's eligibility. In order to release our hold, I have asked that the bill I introduced changing the percentage that a qualified state must be changed from 185 to

184 percent of poverty be approved by the State in conjunction with H.R. 2854. Unfortunately, our bill will then have to be taken up and passed by the House of Representatives and signed into law by the President.

I have received a letter from Chairman TAUZIN, and Ranking Member DINGELL of the House Energy and Commerce Committee ensuring the intent of H.R. 2854 is to include New Mexico and provides their commitment that they will ensure any technical problem our State has with the language will be fixed immediately upon return from the August recess. I thank them for their commitment to New Mexico.

Once again, many States are accessing their CHIP allotments to cover kids at poverty levels far below New Mexico's current or past eligibility levels. The children in those states are certainly no more worthy and the children of New Mexico deserve better than they are getting from the Federal Government. I accept the commitment made by the leadership of the Senate Finance Committee and the House Energy and Commerce Committee to fix this problem and therefore urge the passage of both H.R. 2854 and the original legislation that I introduced today.

I ask unanimous consent that the letter I referred to be printed in the RECORD.

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

JULY 31, 2003.

Senator JEFF BINGAMAN,
Senator PETE DOMENICI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS BINGAMAN AND DOMENICI:

We are writing to provide our commitment to pass a technical corrections bill in September that will provide the proper technical fix that will allow New Mexico to use 20% of their SCHIP allotments to pay for certain Medicaid eligible children.

Prior to House passage of H.R. 2854, CMS had provided technical assistance that indicated that New Mexico would be covered under the language in the bill. The authors of the bill intended that New Mexico would be covered, and drafted the language accordingly, based on the information provided by CMS.

We have subsequently learned that New Mexico may not be able to use the 20% because of potential flaws in the language contained in H.R. 2854. This was not our intent, and we are committing to passing a technical corrections bill in September that will allow New Mexico to use these funds.

Sincerely,

CONGRESSMAN BILLY TAUZIN,
Chairman of the House Committee on Energy & Commerce.
CONGRESSMAN JOHN D. DINGELL,
Ranking Member of the House Committee on Energy & Commerce.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. FRIST, Mr. DASCHLE, Mr. DOMENICI, Mr. BINGAMAN, Mr. INHOFE, Mr. JEFFORDS, Mr. THOMAS, Mr. VOINOVICH, Mr. CONRAD, Mrs. LINCOLN, Mr. COLEMAN, Mr. DORGAN, Mr. BOND, Mr. HARKIN, Mr. DAYTON, Mr. DURBIN, Mr. TALENT, Mr. NELSON of Nebraska, and Mr. BROWNBACK):

S. 1548. A bill to amend the Internal Revenue Code of 1986 to provide incentives for the production of renewable fuels and to simplify the administration of the Highway Trust Fund fuel excise taxes, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, as Members of the this Senate are well aware, I have worked for many years on the development of renewable fuels in the marketplace. Twenty-five years ago we created an alcohol fuels tax incentive to promote the use of ethanol. Today, I am introducing legislation that will simplify the excise tax collection system for all transportation and renewable fuels.

This legislation reforms the alcohol fuels tax credit and creates a new ''Volumetric Ethanol Excise Tax Credit'' (VEETC). In addition to streamlining the alcohol fuels tax credit, this legislation creates a new tax credit for biodiesel.

Under the VEETC we accomplish three objectives: First, improve the tax collection system for renewable fuels; second, increase the revenue source for the Highway Trust Fund.

This is because the full amount of user excise taxes levied will be collected and remitted to the Highway Trust Fund (HTF). In simplifying the tax collection system, all user excise taxes levied on both gasoline and ethanol blended fuels would be collected at 18.4 cents per gallon; and all excise taxes levied on diesel and biodiesel blended fuels would be collected at 24.4 cents per gallon.

On average, the proposal would generate more than $2 billion per year in additional HTF revenue, which would improve the ability of the federal government to address the nation's transportation infrastructure needs; and third, we will enhance the delivery of renewable fuels in the marketplace.

The federal government's tax collection system will work in concert with the petroleum industry's and independent terminal's fuel delivery system.

The Grassley/Baucus amendment provides tremendous new flexibility to gasoline refiners, marketers, and ethanol producers.

It eliminates the restrictive blend levels, 5.7 percent, 7.7 percent and 10 percent dictated by the Tax Code to reflect obsolete Clean Air Act requirements, providing significant flexibility to oil companies to blend as much or as little ethanol or biodiesel to meet their octane or volume needs.

It streamlines the tax collection system to avoid the potential for fraud while accelerating the refund mechanism.

It provides new market opportunities for ethanol and biodiesel in off-road uses, E–85 and ETBE, and, of course, it resolves a longstanding issue with regard to the Highway Trust Fund.

The ''Volumetric Ethanol Excise Tax Credit Act of 2003'' is a forward-thinking piece of legislation that deserves universal support and it will address a number of tax issues that have created roadblocks for the renewable industry for a number of years.

Specifically, the tax amendment will do the following: eliminate the negative impact of the ethanol tax incentive on the Highway Trust Fund; eliminate the waste, fraud and abuse of the excise tax collection system, which means that 18.4¢ per gallon of each gallon of ethanol-blend fuel will be remitted to the U.S. Treasury; streamline the delivery of renewable fuels to petroleum blenders at the terminal rack because fuel mixtures will not be based on the Clean Air Act requirements of 5.7, 7.7 or 10 percent blends—the tax credit is allowed for any blend of ethanol and gasoline; streamline the tax refund system for below the rack blenders to allow a tax refund of 52 cents per gallon on each gallon of ethanol blended with gasoline to be paid within 20 days of blending gasoline with ethanol; Eliminate the need of the alcohol fuels income tax credit that is subject to the alternative minimum tax; any taxpayer eligible for the alcohol fuels tax credit will be able to use the volume ethanol excise tax credit system, which means they will be able to file for a refund for every gallon of ethanol used in the marketplace without regard to the income of the taxpayer or whether the ethanol is used in a taxed fuel or tax exempt fuel.

Create a new tax credit for biodiesel—$1.00 per gallon for biodiesel made from virgin oils derived from agricultural products and animal fats; and $.50 per gallon for biodiesel made from agricultural products and animal fats.

Allow the credit to be claimed in both taxable and nontaxable markets; tax exempt fleet fuel programs; off road diesel markets (died diesel).

Streamline the use of biodiesel at the terminal rack—the tax structure and credit will encourage petroleum blenders to blend biodiesel as far upstream as possible, which under the RFS and Minnesota's 2 percent volume requirement will allow more biodiesel to be used in the marketplace.

Streamline the tax refund system for below the rack blenders to allow a tax refund of the biodiesel tax credit on each gallon of biodiesel blended with diesel, dyed and undyed, to be paid within 20 days of blending.

The alternative minimum tax (AMT) will not be an issue for biodiesel; any taxpayer eligible for the biodiesel tax credit will be able use the volume biodiesel excise tax credit system, which means they will be able to file for a refund for every gallon of biodiesel used in the marketplace regard to the income of the taxpayer or whether the ethanol is used in a taxed fuel or tax exempt fuel.

No affect on the Highway Trust Fund—the biodiesel tax credit will be paid for out of the ''General fund'' not the ''Highway Trust Fund.''

Eliminate the E85 AMT issue: any taxpayer eligible for the alcohol fuels tax credit will be able use the volume ethanol excise tax credit system, which means they will be able to file for a refund for every gallon of ethanol used in the marketplace without regard to the income of the taxpayer or whether the ethanol is used in a taxed fuel or tax exempt fuel.

Allow the alcohol fuels tax credit to be claimed in both taxable and non-taxable markets;

Streamline the tax refund system for below the rack blenders to allow a tax refund of the alcohol fuels credit on each gallon of ethanol blended with gasoline to be paid within 20 days of blending.

I feel strongly about the legislation because it eliminates the tax infrastructure, and fuel delivery impediments that have been problematic throughout the history of the renewable duels industry and encourage you to join us in working to enact this legislation during this Congress.

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

S. 1548

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Volumetric Ethanol Excise Tax Credit (VEETC) Act of 2003''.

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

SEC. 2. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

''(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

''(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

''(ii) for the taxable year in which such sale or use occurs.

''(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(2) BIODIESEL CREDIT.—

''(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

''(i) is used by the taxpayer as a fuel in a trade or business, or

''(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

''(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

''(3) CREDIT FOR AGRI-BIODIESEL.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

''(B) CERTIFICATION FOR AGRI-BIODIESEL.—Subparagraph (A) shall apply only if the taxpayer described in paragraph (1)(A) or (2)(A) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

''(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any agri-biodiesel shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such agri-biodiesel solely by reason of the application of section 6426 or 6427(e).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter for use in diesel-powered engines which meet—

''(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(B) the requirements of the American Society of Testing and Materials D6751.

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

''(3) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year ending on or before the date of the enactment of section 40B.''.

(2)(A) Section 87, as amended by this Act, is amended—

(i) by striking ''and'' at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting '', and'',

(iii) by adding at the end the following new paragraph:

''(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).'', and

(iv) by striking ''**FUEL CREDIT**'' in the heading and inserting ''**AND BIODIESEL FUELS CREDITS**''.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking ''fuel credit'' and inserting ''and biodiesel fuels credits''.

(3) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting '', and'', and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(4) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 3. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

''SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the

applicable amount for each gallon of alcohol used by the taxpayer in producing an alcohol fuel mixture.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

''(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

''(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' is a mixture which—

''(A) consists of alcohol and a taxable fuel, and

''(B) is sold for use or used as a fuel by the taxpayer producing the mixture.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

''(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

''(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

''(5) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2010.

''(c) BIODIESEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any qualified biodiesel mixture.

''(2) APPLICABLE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

''(B) AMOUNT FOR AGRI-BIODIESEL.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

''(ii) CERTIFICATION FOR AGRI-BIODIESEL.—Clause (i) shall apply only if the taxpayer described in paragraph (1) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

''(3) DEFINITIONS.—Any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2005.

''(d) MIXTURE NOT USED AS A FUEL, ETC.—

''(1) IMPOSITION OF TAX.—If—

''(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or qualified biodiesel mixture, respectively, and

''(B) any person—

''(i) separates such alcohol or biodiesel from the mixture, or

''(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

''(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.''.

(b) REGISTRATION REQUIREMENT.—Section 4101(a) (relating to registration) is amended by inserting ''and every person producing biodiesel (as defined in section 40B(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4091''.

(c) CONFORMING AMENDMENTS.—

(1) Section 40(c) is amended by striking ''section 4081(c), or section 4091(c)'' and inserting ''section 4091(c), section 6426, section 6427(e), or section 6427(f)''.

(2) Section 40(d)(4)(B) is amended by striking ''or 4081(c)''.

(3) Section 40(e)(1) is amended—

(A) by striking ''2007'' in subparagraph (A) and inserting ''2010'', and

(B) by striking ''2008'' in subparagraph (B) and inserting ''2011''.

(4) Section 40(h) is amended—

(A) by striking ''2007'' in paragraph (1) and inserting ''2010'', and

(B) by striking '', 2006, or 2007'' in the table contained in paragraph (2) and inserting ''through 2010''.

(5) Section 4041(b)(2)(B) is amended by striking ''a substance other than petroleum or natural gas'' and inserting ''coal (including peat)''.

(6) Paragraph (1) of section 4041(k) is amended to read as follows:

''(1) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 6426(b)(4)(A)), the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c).''.

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

''(2) GASOLINE.—The term 'gasoline'—

''(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)) or a denaturant of alcohol (as defined in section 6426(b)(4)(A)), and

''(B) includes, to the extent prescribed in regulations—

''(i) any gasoline blend stock, and

''(ii) any product commonly used as an additive in gasoline.

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.''.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

''(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

''(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

''(2) USED AS FUEL.—If alcohol (as defined in section 40(d)(1)) or biodiesel (as defined in section 40B(d)(1)) or agri-biodiesel (as defined in section 40B(d)(2)) which is not in a mixture with a taxable fuel (as defined in section 4083(a)(1))—

''(A) is used by any person as a fuel in a trade or business, or

''(B) is sold by any person at retail to another person and placed in the fuel tank of such person's vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40B(b)(2)) with respect to such fuel.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

''(4) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

''(B) any qualified biodiesel mixture (within the meaning of section 6426(c)(1)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2005.''.

(10) Subsection (f) of section 6427 is amended to read as follows:

''(f) AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

''(1) IN GENERAL.—Except as provided in subsection (k), if any aviation fuel on which tax was imposed by section 4091 at the regular tax rate is used by any person in producing a mixture described in section 4091(c)(1)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

''(2) DEFINITIONS.—For purposes of paragraph (1)—

''(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

''(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(2) thereof.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any aviation fuel with respect to which an amount is payable under subsection (d) or (l).

''(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.''.

(11) Paragraphs (1) and (2) of section 6427(i) are amended by inserting ''(f),'' after ''(d),''.

(12) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)(1)'',

(B) by striking ''gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))'' in subparagraph (A) and inserting ''a mixture described in section 6426'',

(C) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

(D) by striking ''20 days of the date of the filing of such claim'' in subparagraph (B) and inserting ''45 days of the date of the filing of such claim (20 days in the case of an electronic claim)'', and

(E) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

(13) Section 6427(o) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) any tax is imposed by section 4081, and'',

(B) by striking ''such gasohol'' in paragraph (2) and inserting ''the alcohol fuel mixture (as defined in section 6426(b)(3))'',

(C) by striking ''gasohol'' both places it appears in the matter following paragraph (2) and inserting ''alcohol fuel mixture'', and

(D) by striking ''GASOHOL'' in the heading and inserting ''ALCOHOL FUEL MIXTURE''.

(14) Section 9503(b)(1) is amended by adding at the end the following new flush sentence: ''For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be

determined without reduction for credits under section 6426.''.

(15) Section 9503(b)(4) is amended—

(A) by adding ''or'' at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(16) Section 9503(c)(2)(A)(i)(III) is amended by inserting ''(other than subsection (e) thereof)'' after ''section 6427''.

(17) Section 9503(e)(2) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(18) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2003.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (b)(12)(D)) not later than September 30, 2003.

By Mr. GREGG.

S. 1550. A bill to change the 30-year treasury bond rate to a composite corporate rate, and to establish a commission on defined benefit plans; to the Committee on Finance.

Mr. GREGG. Mr. President, I come to the floor today to offer legislation to solve a pension funding crisis in our country. The approach incorporated in this bill has been supported in the past by both the American Federation of Labor-Congress of Industrial Organizations and the American business community. As Chairman of the Senate Labor Committee, I must say that these two groups do not often agree and I want to take this historic opportunity to memorialize their agreement.

These groups have supported the approach taken by this legislation because it will generate jobs, improve the financial strength of our corporations, and promote capital investment, all at a time when our economy sorely needs a shot in the arm.

My colleagues will remember that Congress adopted a temporary fix to the problem raised by the artificially low interest rate set by the 30-year Treasury bond. Pension law relies on that the 30-year Treasury bond, which is no longer being issued, to determine funding levels. A low interest rate means employers must put more cash in their plans to satisfy full funding requirements. That temporary fix, enacted in March 2002, is set to expire at the end of this year.

If no action is taken soon, companies will be required to divert billions of dollars from capital investment and job growth in order to satisfy the arbitrary funding rules. For example, General Motors will have to contribute $7 billion if no action is taken by the end of this year. Compounded in businesses across the nation, the total liability adds up to—as the late Carl Sagan used to say—''Billions and Billions.''

Both for collective bargaining and corporate financial planning purposes, a new fix needs to be in place this summer.

In a nutshell, the Pension Stability Act, the legislation I am introducing today, does four things.

First, it extends the temporary fix for a longer period of time—five years—in order to give Congress time to craft a permanent solution. The five year period is important because businesses and their unions need time to plan ahead and to make commitments that they can live up to.

Second, the bill temporarily switches form the out-of-date 30-year Treasury bond as the benchmark rate and adopts for this five-year period a rate based on a high-quality corporate bond index or composite of indices. In shifting to this rate, the legislation assumes that the highest permissible rate of interest is 105 percent of the four-year weighted average of that rate for the first two years—2004 and 2005. For the remaining three years—so as not to permit long term underfunding of pensions—the highest permissible rate of interest drops down to 100 percent of the weighted average.

Third, the legislation incorporates a smooth transition from the out-of-date 30-year Treasury Bond rate to the composite rate that will be used for determining funding obligations. No change in the lump sum distribution rate is made for the first two years. Then, in 20 percent increments, the new rate is phased in. My bill does not take the interest rate to 100 percent of the composite rate, as most commentators assert is the appropriate rate. But my bill makes significant progress toward that goal, and gives Congress time to make informed decisions on this important issue that affects very many lives.

Finally, the Pension Stability Act acknowledges that reasonable people can differ on the best permanent solution to the pension funding issues. The amendment calls for the creation of an independent commission to consider all of the issues relevant to funding of pensions, and making concrete recommendations to Congress. The goal is to take controversy and politics out of the deliberation.

The issues confronting our pension system are too important, and the dollar figures too large, for an internal task force within any administration. Stakeholders in this debate include company financial and human resources officers, stockholders, plan participants and beneficiaries, unions, and financial markets. If they are not included in the process, they are more likely to oppose the proffered solutions. The intent with this legislation is to create a bipartisan commission that includes business, union and pension rights groups. Such a panel would be able to address both the funding issues presented here, including the ''private yield curve'' approach, and evaluate other ideas for revitalizing the defined benefit system.

I urge my colleagues to support this amendment.

By Mr. MCCAIN.

S. 1551. A bill to provide educational opportunities for disadvantaged children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. MCCAIN. Mr. President, today, I am pleased to reintroduce legislation to authorize a three-year nationwide school choice demonstration program targeted at children from economically disadvantaged families. The Excellence Through Choice to Elevate Learning Act, or the EXCEL Act, will expand educational opportunities for low-income children by providing parents and students the freedom to choose the best school for their unique academic needs while encouraging schools to be creative and responsive to the needs of all students.

This bill authorizes $1.8 billion annually for fiscal years 2004 through 2007 to be used to provide school choice vouchers to economically disadvantaged children throughout the nation. The funds allocated by the bill will be divided among states based upon the number of children they have enrolled in public schools. States will then conduct a lottery among low-income children who attend the public schools with the lowest academic performance in their State. Each child selected in the lottery would receive $2,000 per year for three years to be used to pay tuition at any school of their choice in the State, including private or religious schools. The money could also be used to pay for transportation to the school or supplementary educational services to meet the unique needs of the individual student.

In total, this bill authorizes $5.4 billion for the three-year school choice demonstration program, as well as an evaluation of the program by the General Accounting Office. The cost of this important test of school vouchers is fully offset by eliminating more than $5.4 billion in unnecessary pork and inequitable corporate tax loopholes.

We all know that one of the most important issues facing our nation is the education of our children. We must strive to develop and implement initiatives which strengthen and improve our education system thereby ensuring that our children are provided with the essential academic tools for succeeding professionally, economically and personally. I am sure we all agree that increasing the academic performance and skills of all our nation's students must be the paramount goal of any education reform we implement.

School vouchers are a viable method of allowing all American children access to high quality schools, including private and religious schools. Every parent, not just the wealthy, should be able to obtain the highest quality education for their children. Tuition vouchers would provide low-income children trapped in poor or mediocre

schools the same educational choices as children of economic privilege.

Some of my colleagues may argue that vouchers would divert money away from our Nation's public schools. They will claim it is better to pour more and more money into poor performing public schools, rather than promote competition in our school systems. I respectfully disagree. While I support strengthening financial support for education in our nation, the solution to what ails our system is not money alone.

Currently our nation spends significantly more money on education than most countries and yet our students consistently score lower than their peers. Students in countries which are struggling economically, socially and politically, such as Russia, outscore U.S. children in critical subjects such as math and physics. Clearly, we must make significant change beyond blindly throwing money into the current structure in order to improve our children's academic performance in order to maintain a viable force in the world economy.

It is shameful that we are failing to provide many of our children with adequate training and quality academic preparation for the real world. The number of college freshmen who require remedial courses in reading, writing and mathematics when they begin their higher education is unacceptably high. It does not bode well for our future economy if the majority of workers are not prepared with the basic skills to engage in a competitive global marketplace.

I concede that school vouchers are not the magic bullet for eradicating all that is wrong with our current educational system, but they are an important opportunity for providing improved academic opportunities for all children, not just the wealthy. Examination of the limited voucher programs scattered around our country reveal high levels of parent and student satisfaction, an increase in parental involvement, and a definite improvement in attendance and discipline at the participating schools. Vouchers encourage public schools, communities and parents to work together to raise the level of education for all students. Through this bill, we have the opportunity to replicate these important benefits throughout all our nation's communities.

Thomas Jefferson said, ''The purpose of education is to create young citizens with knowing heads and loving hearts.'' If we fail to give our children the education they need to nurture their heads and hearts, then we threaten their futures and the future of our nation. Each of us is responsible for ensuring that our children have both the love in their hearts and the knowledge in their heads to not only dream, but to make their dreams a reality.

The time has come for us to finally conduct a national demonstration of school choice to determine the benefits or perhaps disadvantages of providing educational choices to all students, not just those who are fortunate enough to be born into a wealthy family. I urge my colleagues to support this bill and put the needs of America's school children ahead of pork barrel projects and tax loopholes benefitting only special interests and big business.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1551

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 ''Excellence through Choice to Elevate Learning Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist States to—

(A) give children from low-income families the same choices among all elementary and secondary schools and other academic programs as children from wealthier families already have;

(B) improve schools and other academic programs by giving parents in low-income families increased consumer power to choose the schools and programs that the parents determine best fit the needs of their children; and

(C) more fully engage parents in their children's schooling; and

(2) to demonstrate, through a 3-year national grant program, the effects of a voucher program that gives parents in low-income families—

(A) choice among public, private, and religious schools for their children; and

(B) access to the same academic options as parents in wealthy families have for their children.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act (other than section 11) $1,800,000,000 for each of fiscal years 2004 through 2007.

(b) EVALUATION.—There is authorized to be appropriated to carry out section 11 $17,000,000 for fiscal years 2005 through 2008.

SEC. 4. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary shall make grants to States, from allotments made under section 5 to enable the States to carry out educational choice programs that provide scholarships, in accordance with this Act.

(b) LIMIT ON FEDERAL ADMINISTRATIVE EXPENDITURES.—The Secretary may reserve not more than $1,000,000 of the amounts appropriated under section 3(a) for a fiscal year to pay for the costs of administering this Act.

SEC. 5. ALLOTMENTS TO STATES.

(a) ALLOTMENTS.—The Secretary shall make the allotments to States in accordance with a formula specified in regulations issued in accordance with subsection (b). The formula shall provide that the Secretary shall allot to each State an amount that bears the same relationship to the amounts appropriated under section 3(a) for a fiscal year (other than funds reserved under section 4(b)) as the number of covered children in the State bears to the number of covered children in all such States.

(b) FORMULA.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations specifying the formula referred to in subsection (a).

(c) LIMIT ON STATE ADMINISTRATIVE EXPENDITURES.—The State may reserve not more than 1 percent of the funds made available through the State allotment to pay for the costs of administering this Act.

(d) DEFINITION.—In this section, the term ''covered child'' means a child who is enrolled in a public school (including a charter school) that is an elementary school or secondary school.

SEC. 6. ELIGIBLE SCHOOLS.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Schools identified by a State under paragraph (2) shall be considered to be eligible schools under this Act.

(2) DETERMINATION.—Not later than 180 days after the date the Secretary issues regulations under section 5(b), each State shall identify the public elementary schools and secondary schools in the State that are at or below the 25th percentile for academic performance of schools in the State.

(b) PERFORMANCE.—The State shall determine the academic performance of a school under this section based on such criteria as the State may consider to be appropriate.

SEC. 7. SCHOLARSHIPS.

(a) IN GENERAL.—

(1) SCHOLARSHIP AWARDS.—With funds awarded under this Act, each State awarded a grant under this Act shall provide scholarships to the parents of eligible children, in accordance with subsections (b) and (c). The State shall ensure that the scholarships may be redeemed for elementary or secondary education for the children at any of a broad variety of public and private schools, including religious schools, in the State.

(2) SCHOLARSHIP AMOUNT.—The amount of each scholarship shall be $2000 per year.

(3) TAX EXEMPTION.—Scholarships awarded under this Act shall not be considered income of the parents for Federal income tax purposes or for determining eligibility for any other Federal program.

(b) ELIGIBLE CHILDREN.—To be eligible to receive a scholarship under this Act, a child shall be—

(1) a child who is enrolled in a public elementary school or secondary school that is an eligible school; and

(2) a member of a family with a family income that is not more than 200 percent of the poverty line.

(c) AWARD RULES.—

(1) PRIORITY.—In providing scholarships under this Act, the State shall provide scholarships for eligible children through a lottery system administered for all eligible schools in the State by the State educational agency.

(2) CONTINUING ELIGIBILITY.—Each State receiving a grant under this Act to carry out an educational choice program shall provide a scholarship in each year of the program to each child who received a scholarship during the previous year of the program, unless—

(A) the child no longer resides in the area served by an eligible school;

(B) the child no longer attends school;

(C) the child's family income exceeds, by 20 percent or more, 200 percent of the poverty line; or

(D) the child is expelled or convicted of a felony, including felonious drug possession, possession of a weapon on school grounds, or a violent act against an other student or a member of the school's faculty.

SEC. 8. USES OF FUNDS.

Any scholarship awarded under this Act for a year shall be used—

(1) first, for—

(A) the payment of tuition and fees at the school selected by the parents of the child for whom the scholarship was provided; and

(B) the reasonable costs of the child's transportation to the school, if the school is

not the school to which the child would be assigned in the absence of a program under this Act;

(2) second, if the parents so choose, to obtain supplementary academic services for the child, at a cost of not more than $500, from any provider chosen by the parents, that the State determines is capable of providing such services and has an appropriate refund policy; and

(3) finally, for educational programs that help the eligible child achieve high levels of academic excellence in the school attended by the eligible child, if the eligible child chooses to attend a public school.

SEC. 9. STATE REQUIREMENT.

A State that receives a grant under this Act shall allow lawfully operating public and private elementary schools and secondary schools, including religious schools, if any, serving the area involved to participate in the program.

SEC. 10. EFFECT OF PROGRAMS.

(a) TITLE I.—Notwithstanding any other provision of law, if a local educational agency in the State would, in the absence of an educational choice program that is funded under this Act, provide services to a participating eligible child under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), the State shall ensure the provision of such services to such child.

(b) INDIVIDUALS WITH DISABILITIES.—Nothing in this Act shall be construed to affect the requirements of part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(c) AID.—

(1) IN GENERAL.—Scholarships under this Act shall be considered to aid families, not institutions. For purposes of determining Federal assistance under Federal law, a parent's expenditure of scholarship funds under this Act at a school or for supplementary academic services shall not constitute Federal financial aid or assistance to that school or to the provider of supplementary academic services.

(2) SUPPLEMENTARY ACADEMIC SERVICES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a school or provider of supplementary academic services that receives scholarship funds under this Act shall, as a condition of participation under this Act, comply with the provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(B) REGULATIONS.—The Secretary shall promulgate regulations to implement the provisions of subparagraph (A), taking into account the purposes of this Act and the nature, variety, and missions of schools and providers that may participate in providing services to children under this Act.

(d) OTHER FEDERAL FUNDS.—No Federal, State, or local agency may, in any year, take into account Federal funds provided to a State or to the parents of any child under this Act in determining whether to provide any other funds from Federal, State, or local resources, or in determining the amount of such assistance, to such State or to a school attended by such child.

(e) NO DISCRETION.—Nothing in this Act shall be construed to authorize the Secretary to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school participating in a program under this Act.

SEC. 11. EVALUATION.

The Comptroller General of the United States shall conduct an evaluation of the program authorized by this Act. Such evaluation shall, at a minimum—

(1) assess the implementation of educational choice programs assisted under this Act and their effect on participants, schools, and communities in the school districts served, including parental involvement in, and satisfaction with, the program and their children's education;

(2) compare the educational achievement of participating eligible children with the educational achievement of similar non-participating children before, during, and after the program; and

(3) compare—

(A) the educational achievement of eligible children who use scholarships to attend schools other than the schools the children would attend in the absence of the program; with

(B) the educational achievement of children who attend the schools the children would attend in the absence of the program.

SEC. 12. ENFORCEMENT.

(a) REGULATIONS.—The Secretary shall promulgate regulations to enforce the provisions of this Act.

(b) PRIVATE CAUSE.—No provision or requirement of this Act shall be enforced through a private cause of action.

SEC. 13. FUNDING.

The Committee on Finance and the Committee on Appropriations of the Senate and the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives shall identify wasteful spending (including loopholes to revenue raising tax provisions) by the Federal Government as a means of providing funding for this Act. Not later than 60 days after the date of enactment of this Act, the committees referred to in the preceding sentence shall jointly prepare and submit to the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, a report concerning the spending (and loopholes) identified under such sentence.

SEC. 14. DEFINITIONS.

In this Act:

(1) CHARTER SCHOOL.—The term ''charter school'' has the meaning given the term in section 5210 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7221i).

(2) ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; PARENT; SECONDARY SCHOOL; STATE EDUCATIONAL AGENCY.—The terms ''elementary school'', ''local educational agency'', ''parent'', ''secondary school'', and ''State educational agency'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) POVERTY LINE.—The term ''poverty line'' means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved.

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

(5) STATE.—The term ''State'' means each of the 50 States.

By Mr. CRAIG:

S. 1553. A bill to amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged in organized retail theft; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, today I am introducing legislation to respond to a growing crime problem that is harming honest businesses, endangering public health, and dragging down our economy.

The problem I am talking about is organized retail theft.

Organized retail theft is a quantum leap in criminality beyond petty shoplifting. It involves professional gangs or theft rings that move quickly from store to store, from community to community, and across State lines to pilfer large amounts of merchandise that can be easily sold through fencing operations, flea markets, swap meets and shady storefront operations.

This type of criminal activity is a growing problem throughout the United States, harming many segments of the retail community, including supermarkets, chain drug stores, independent pharmacies, convenience stores, large discount operations, mass merchandisers, and specialty shops, among others. Organized retail theft has become the most pressing security problem confronting retailers and their suppliers, accounting for an estimated $30 billion in losses at the retail level annually, according to the Federal Bureau of Investigation's interstate theft task force.

This kind of theft also presents significant health and safety risks for consumers. While items that are in high demand and prized by these organized gangs include software, videos, DVDs and CDs, razor blades, camera film, and batteries—they also include over-the-counter drug products, such as analgesics, cough and cold medications, and infant formula. Professional theft rings do not provide ideal or required storage conditions for consumable items, and as a result, the integrity and nutrient content of these products is often compromised. Furthermore, when products are near the end of their expiration date, it is not uncommon for unscrupulous middlemen to change the expiration date, lot numbers, and labels to falsely extend the shelf-life of the products or to disguise the fact that the merchandise has been stolen.

Clearly, theft of this kind adversely affects both retailers and consumers in a variety of ways. For example, because theft by professional gangs has become so rampant in certain product categories, such as infant formula, many retail stores are taking the product off the shelves and placing them behind the counter or under lock and key. In some cases, products are simply unavailable due to high pilferage rates.

Let me commend the Federal Bureau of Investigation and the Department of Justice for their work in this area. I know the Department has successfully prosecuted a number of cases against professional shoplifting rings. However, retail organizations and individual companies are crying out for help because this type of criminal activity is escalating, and there is no federal statute that specifically addresses organized retail theft. I believe more can be done to help in the investigation, apprehension, and prosecution of these criminal gangs.

The legislation that I am introducing is in response to the concerns that

have been brought to my attention by the retailing community. I hope my colleagues will join me in this effort. While this bill is not a cure-all, I hope it will help to highlight the magnitude of the problem so that we can begin considering appropriate initiatives with all interested parties, including our federal law enforcement agencies, on how to effectively combat and deter organized retail theft in the future.

I ask unanimous consent that the text of the Organized Retail Theft Act be printed in the RECORD.

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

S. 1553

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 ''Organized Retail Theft Act of 2003''.

SEC. 2. PROHIBITION AGAINST ORGANIZED RETAIL THEFT.

(a) IN GENERAL.—Chapter 103 of title 18, United States Code, is amended by adding at the end the following:

''§ 2120. Organized retail theft

''(a) IN GENERAL.—Whoever in any material way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by taking possession of, carrying away, or transferring or causing to be carried away, with intent to steal, any goods offered for retail sale with a total value exceeding $1,000, but not exceeding $5,000, during any 180-day period shall be fined not more than $1,000, imprisoned not more than 1 year, or both.

''(b) HIGH VALUE.—Whoever in any material way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by taking possession of, carrying away, or transferring or causing to be carried away, with intent to steal, any goods offered for retail sale with a total value exceeding $5,000, during any 180-day period, shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) RECEIPT AND DISPOSAL.—Whoever receives, possesses, conceals, stores, barters, sells, disposes of, or travels in interstate or foreign commerce, with the intent to distribute, any property which the person knows, or should know has been taken or stolen in violation of subsection (a) or (b), or who travels in interstate or foreign commerce, with the intent to distribute the proceeds of goods which the person knows or should know to be the proceeds of an offense described in subsection (a) or (b), or to otherwise knowingly promote, manage, carry on, or facilitate an offense described in subsection (a) or (b), shall be fined or imprisoned as provided in subsection (a) if the actions involved a violation of subsection (a) and as provided in subsection (b) if the actions involved a violation of subsection (b).

''(d) ENHANCED PENALTIES.—

''(1) ASSAULT.—Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title, imprisoned not more than 25 years, or both.

''(2) DEATH AND KIDNAPPING.—Whoever, in committing any offense under this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than 10 years, or if death results shall be punished by death or life imprisonment.

''(e) FORFEITURE AND DISPOSITION OF GOODS.—

''(1) IN GENERAL.—Whoever violates this section shall forfeit to the United States, irrespective of any provision of State law any interest in the retail goods the person knows or should know to have been acquired or maintained in violation of this section.

''(2) INJUNCTIONS AND IMPOUNDING, FORFEITURE, AND DISPOSITION OF GOODS.—

''(A) INJUNCTIONS AND IMPOUNDING.—In any prosecution under this subsection, upon motion of the United States, the court may—

''(i) grant 1 or more temporary, preliminary, or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain the alleged violation; and

''(ii) at any time during the proceedings, order the impounding on such terms as the court determines to be reasonable, of any good that the court has reasonable cause to believe was involved in the violation.

''(B) FORFEITURE AND DISPOSITION OF GOODS.—Upon conviction of any person of a violation under this subsection, the court shall—

''(i) order the forfeiture of any good involved in the violation or that has been impounded under subparagraph (A)(ii);

''(ii) either—

''(I) order the disposal of the good by delivery to such Federal, State, or local government agencies as, in the opinion of the court, have a need for such good, or by gift to such charitable or nonprofit institutions as, in the opinion of the court, have a need for such good, if such disposition would not otherwise be in violation of law and if the manufacturer consents to such disposition; or

''(II) order the return of any goods seized or impounded under subparagraph (A)(ii) to their rightful owner; and

''(iii) find that the owner of the goods seized or impounded under subparagraph (A)(ii) aided in the investigation and order that such owner be reimbursed for the expenses associated with that aid.

''(C) TERMS.—For purposes of remission and mitigation of goods forfeited to the Government under this subsection, the provisions of section 981(d) of this title shall apply.

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person injured by a violation of this section, or who demonstrates the likelihood of such injury, may bring a civil action in an appropriate United States district court against the alleged violator. The complaint shall set forth in detail the manner and form of the alleged violation.

''(2) INJUNCTIONS AND IMPOUNDING AND DISPOSITION OF GOODS.—In any action under paragraph (1), the court may—

''(A) grant 1 or more temporary, preliminary, or permanent injunctions upon the posting of a bond at least equal to the value of the goods affected and on such terms as the court determines to be reasonable to prevent or restrain the violation;

''(B) at any time while the action is pending, order the impounding upon the posting of a bond at least equal to the value of the goods affected and, on such terms as the court determines to be reasonable, if the court has reasonable cause to believe the goods were involved in the violation; and

''(C) as part of a final judgment or decree, in the court's discretion, order the restitution of any good involved in the violation or that has been impounded under subparagraph (B).

''(3) DAMAGES.—In any action under paragraph (1), the plaintiff shall be entitled to recover the actual damages suffered by the plaintiff as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In establishing the violator's profits, the plaintiff shall be required to present proof only of the violator's sales, and the violator shall be required to prove all elements of cost or deduction claimed.

''(4) COSTS AND ATTORNEY'S FEES.—In any action under paragraph (1), in addition to any damages recovered under paragraph (3), the court in its discretion may award the prevailing party its costs in the action and its reasonable attorney's fees.

''(5) REPEAT VIOLATIONS.—

''(A) TREBLE DAMAGES.—In any case in which a person violates this section within 3 years after the date on which a final judgment was entered against that person for a previous violation of this section, the court may, in its discretion, in an action brought under this subsection, increase the award of damages for the later violation to not more than 3 times the amount that would otherwise be awarded under paragraph (3), as the court considers appropriate.

''(B) BURDEN OF PROOF.—A plaintiff that seeks damages described in subparagraph (A) shall bear the burden of proving the existence of the earlier violation.

''(h) DEFINITION.—In this section, the term 'value' has the meaning given that term in section 2311 of this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 103 of title 18, United States Code, is amended by inserting at the end the following:

''2120. Organized retail theft.''.

SEC. 3. COMMISSION OF ORGANIZED RETAIL THEFT A PREDICATE FOR RICO CLAIM.

Section 1961(1) of title 18, United States Code, is amended by adding '', section 2120 (relating to organized retail theft)'' before '', sections 2251''.

SEC. 4. FLEA MARKETS.

(a) PROHIBITIONS.—No person at a flea market shall sell, offer for sale, or knowingly permit the sale of any of the following products:

(1) Baby food, infant formula, or similar products used as a sole or major source of nutrition, manufactured and packaged for sale for consumption primarily by children under 3 years of age.

(2) Any drug, food for special dietary use, cosmetic, or device, as such terms are defined in the Federal Food, Drug, and Cosmetic Act and regulations issued under that Act.

(b) EXCLUSION.—Nothing in this section shall prohibit a person from engaging in activity otherwise prohibited by subsection (a), in the case of a product described in subsection (a)(2), if that person maintains for public inspection written documentation identifying the person as an authorized representative of the manufacturer or distributor of that product.

(c) FLEA MARKET DEFINED.—

(1) IN GENERAL.—As used in this section, the term ''flea market'' means any physical location, other than a permanent retail store, at which space is rented or otherwise made available to others for the conduct of business as transient or limited vendors.

(2) EXCLUSION.—For purposes of paragraph (1), transient or limited vendors shall not include those persons who sell by sample or catalog for future delivery to the purchaser.

(d) CRIMINAL PENALTIES.—Any person who willfully violates this section shall be punished as provided in section 2120 of title 18, United States Code.

SEC. 5. ATTORNEY GENERAL REPORTING REQUIREMENTS.

Beginning with the first year after the date of enactment of this Act, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, United States Code, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve organized retail theft (as punishable under section 2120 of title 18, United States Code, as added by this Act), including—

(1) the number of open investigations;

(2) the number of cases referred by the United States Customs Service;

(3) the number of cases referred by other agencies or sources; and

(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under section 2120 of title 18, United States Code.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 208—EXPRESSING THE SENSE OF THE SENATE IN SUPPORT OF IMPROVING AMERICAN DEFENSES AGAINST THE SPREAD OF INFECTIOUS DISEASES

Mr. AKAKA submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 208

Whereas the Central Intelligence Agency's January 2000 National Intelligence Estimate (NIE), The Global Infectious Disease Threat and Its Implications for the United States, found that infectious diseases are a leading cause of death worldwide and that ''New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years'';

Whereas the World Health Organization estimates that infectious diseases accounted for more than 11,000,000 deaths in 2001;

Whereas the NIE observed the number of infectious diseases related deaths within the United States had increased, having doubled to 170,000 since 1980;

Whereas the General Accounting Office noted in its August 2001 report, Global Health: Challenges in Improving Infectious Disease Surveillance Systems, that most of the infectious disease deaths occur in the developing world, but that infectious diseases pose a threat to people in all parts of the world because diseases know no boundaries;

Whereas the NIE remarked that the increase in international air travel and trade will ''dramatically increase the prospects,'' that infectious diseases will ''spread quickly around the globe, often in less time than the incubation period of most diseases'';

Whereas, the NIE commented that many infectious diseases, like the West Nile virus, come from outside U.S. borders and are introduced by international travelers, immigrants, returning U.S. military personnel, or imported animals or foodstuffs;

Whereas diseases coming from overseas such as Acquired Immune Deficiency Syndrome (AIDS), Severe Acute Respiratory Syndrome (SARS), and West Nile virus have had or could have a serious impact on the health and welfare of the U.S. population;

Whereas the NIE found that war, natural disasters, economic collapse, and human complacency around the world are causing a breakdown in health care delivery and helping the emergence or reemergence of infectious diseases;

Whereas, the danger of an outbreak of a deadly disease overseas affecting the United States is increasing;

Whereas the rapid and easy transport of diseases to the United States underscores that Americans are now part of a global public health system;

Whereas the General Accounting Office emphasized that ''disease surveillance provides national and international public health authorities with information they need to plan and manage to control these diseases'';

Whereas the early warning of a disease outbreak is key to its identification, the quick application of countermeasures and the development of cures;

Whereas the United States should strengthen its ability to detect foreign diseases before such diseases reach U.S. borders;

Whereas the G–8 group of industrialized countries at the 2003 Evian summit made a commitment to fight against AIDS, tuberculosis, and malaria; encouraged research into diseases affecting mostly developing countries; committed to working closely with the World Health Organization; and recognized that the spread of SARS ''demonstrates the importance of global collaboration, including global disease surveillance, laboratory, diagnostic and research efforts, and prevention, care, and treatment'';

Whereas the Centers for Disease Control and Prevention (CDC) plays an important role in foreign disease surveillance, and a key CDC program to strengthen global disease surveillance is its training of foreign specialists in modern epidemiology through its Field Epidemiology Training Programs (FETPs);

Whereas the CDC's FETPs have existed for almost 20 years working with ministries of health around the world and the World Health Organization, and that currently FETPs are in 30 countries throughout the world to support disease detection and provide an essential link in global surveillance; and

Whereas the work of the FETPs is critical to establishing a first line of defense overseas to protect the health of American citizens: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Centers for Disease Control and Prevention's Field Epidemiology Training Programs and related epidemic services and global surveillance programs should receive full support;

(2) the President should require an annual National Intelligence Estimate on the global infectious disease threat and its implications for the United States;

(3) the President should propose to the G–8 that the G–8 develop and implement a program to train foreign epidemiological specialists in the developing world; and

(4) the international community should increase funding for the World Health Organization's global disease surveillance capability.

Mr. AKAKA. Mr. President, I rise to submit a sense of the Senate resolution that the Senate supports improving American defenses against the spread of infectious diseases from abroad. The United States and other nations have a serious global problem in confronting the natural outbreak or deliberate spread of infectious diseases. The Central Intelligence Agency's January 2000 National Intelligence Estimate, NIE, The Global Infectious Disease Threat and Its Implications for the United States found that infectious diseases are a leading cause of death worldwide and that ''New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.''

I have been concerned about the bioterrorist threat to this country for some time. In 2001, as chairman of the Senate Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services, I chaired hearings that addressed the Nation's preparedness to respond to a bioterrorist attack. Sadly, the SARS outbreak demonstrated that naturally occurring diseases can be spread extraordinarily quickly through international air travel. This raises questions over our Nation's ability to counter a bioterrorist attack and protect our public health in general. Preparations that organize our health care network against a naturally occurring disease outbreak can also help guard Americans against a bioterrorist attack. Our first line of defense must be pushed beyond the borders of the United States to countries overseas. We should help stop the spread of a disease at its source before tens or hundreds of air-travelers inadvertently spread it around the globe.

The World Health Organization, WHO, World Health Report 2002 estimates that infectious diseases accounted for more than 11 million deaths in 2001. Most of these infectious disease deaths occurred in the developing world, where they imposed a terrible burden on societies whose public health systems were already stretched beyond their limits. Infectious diseases, however, pose a threat to people in all parts of the world. Diseases easily spread beyond national borders.

The NIE noted that many infectious diseases come from outside U.S. borders and are introduced by international travelers, immigrants, returning U.S. military personnel, or imported animals or foodstuffs. The report states the increase in international air travel and trade will ''dramatically increase the prospects,'' that infectious diseases will ''spread quickly around the globe, often in less time than the incubation period of most diseases.''

Diseases that originated overseas, such as HIV/AIDS, have had a serious impact on the health and welfare of U.S. population. For example, according to the Centers for Disease Control and Prevention, CDC, since the beginning of the HIV/AIDS epidemic, there have been almost 450,000 deaths. There are an estimated 800,000 to 900,000 people currently living with human immunodeficiency virus in the United States with approximately 40,000 new human immunodeficiency virus infections occurring in the U.S. every year.