establishment of the United States Cadet Nurse Corps and voicing the appreciation of Congress regarding the service of the members of the United States Cadet Nurse Corps during World War II; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 595

At the request of Mr. HATCH, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 1214

At the request of Ms. MIKULSKI, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1214, a bill to provide a partially refundable tax credit for caregiving related expenses.

S. 1231

At the request of Mr. SCHUMER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1231, a bill to eliminate the burdens and costs associated with electronic mail spam by prohibiting the transmission of all unsolicited commercial electronic mail to persons who place their electronic mail addresses on a national No-Spam Registry, and to prevent fraud and deception in commercial electronic mail by imposing requirements on the content of all commercial electronic mail messages.

S. 1510

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of 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 residence in the United States, and for other purposes.

S. 1531

At the request of Mr. HATCH, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Minnesota (Mr . DAYTON) were added as cosponsors of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1594

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1594, a bill to require a report on reconstruction efforts in Iraq.

S. 1612

At the request of Ms. COLLINS, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1612, a bill to establish a technology, equipment, and information transfer within the Department of Homeland Security.

S. 1630

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral services, and for other purposes.

S. 1685

At the request of Mr. GRASSLEY, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1685, a bill to extend and expand the basic pilot program for employment eligiblity verification, and for other purposes.

S. 1708

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1708, a bill to provide extended unemployment benefits to displaced workers, and to make other improvements in the unemployment insurance system.

S. RES. 231

At the request of Mr. FEINGOLD, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. Res. 231, a resolution commending the Government and people of Kenya.

AMENDMENT NO. 1798

At the request of Mrs. HUTCHISON, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of amendment No. 1798 intended to be proposed to S. 1689, an original bill making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

AMENDMENT NO. 1816

At the request of Mr. DASCHLE, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of amendment No. 1816 proposed to S. 1689, an original bill making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

AMENDMENT NO. 1816

At the request of Mrs. MURRAY, her name was added as a cosponsor of amendment No. 1816 proposed to S. 1689, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORZINE:

S. 1711. A bill to increase the expertise and capacity of community-based organizations involved in economic development activities and key development programs; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, I rise today to introduce the Community Economic Development Expertise Enhancement Act of 2003.

This regulation would provide funding for nonprofit, community-based economic development organizations and for the establishment of partnerships between these organizations. Most importantly, the legislation would authorize grants to promote the use of mentors to improve the operational capabilities of community-based organizations in the areas of project development, personnel management, legal services, and financial management. These and other eligible uses of the funding would increase the capacity of these organizations to expand community development activities throughout the country.

Over the past several decades, our Nation has seen the emergence of community-based organizations that have helped break the cycle of poverty for millions of families. Today, according to the National Congress of Community Economic Development, there are more than 3,600 of these organizations, many of which serve some of our Nation's most economically challenged communities. These include both urban and rural areas, as well as suburban regions.

Typically, community development corporations have annual budgets ranging from $200,000 to $500,000 and staffs averaging about six members. Their lack of personnel, expertise and financing often creates real constraints on their ability to make even greater contributions to their community.

This legislation would expand our investment in these organizations, and expand their capacity to build homes, create jobs, improve public safety, provide critical social services, increase access to capital, and turn around communities now filled with despair. The bill would serve a wide range of communities with different economic, geographic, and social characteristics.

I hope my colleagues will support the bill, and 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. 1711

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 ''Community Economic Development Expertise Enhancement Act of 2003''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) there are a multitude of community economic development programs administered by the Federal Government that assist many of the most economically distressed areas in the United States in—

(A) revitalizing physical and economic structures; and

(B) providing support to small- and medium-sized businesses to encourage and assist the businesses in generating long-term jobs and economic opportunity;

(2) there are many nonprofit, nongovernmental, community-based economic development organizations, including faith-based organizations, that have successfully operated community economic development programs that create jobs, build homes, and revitalize local markets;

(3) Federal community economic development programs in effect as of the date of enactment of this Act are intended to leverage private sector investment as part of an overall community development effort;

(4) Federal community economic development programs connect residents of distressed neighborhoods to jobs and opportunities of the regional marketplace, replacing economic distress with opportunity;

(5) Federal community economic development programs—

(A) provide financial assistance, including tax credits and loan guarantees;

(B) involve private investment institutions and universities; and

(C) provide technical expertise for small businesses;

(6) Federal community economic development programs in effect as of the date of enactment of this Act build on ongoing efforts to encourage economic growth in distressed communities by—

(A) helping to create new affordable housing opportunities;

(B) allowing communities to address important public safety, access to capital, infrastructure, and environmental concerns; and

(C) providing social services, including affordable health care, transportation, child care, and youth development;

(7) the continuing success of Federal community economic development programs will depend in great measure on the ability of community-based organizations and private sector institutions to form partnerships that connect residents of distressed neighborhoods to jobs and other opportunities;

(8) the Federal Government administers various programs that employ the services and capabilities of community-based organizations to deliver a wide range of services to residents of distressed communities;

(9) Federal community economic development programs help achieve lasting improvement and enhance domestic prosperity by the establishment of stable and diversified local economies, sustainable development, and improved local conditions;

(10) there is a need for greater cooperation between the Federal Government, States, and other entities to ensure that, consistent with national community economic development objectives, Federal programs are compatible with, and further the objectives of, State, regional, and local economic development plans and comprehensive economic development strategies;

(11) while economic development is an inherently local process, the Federal Government should work in closer partnership with community-based economic development organizations to ensure that—

(A) resources are fully utilized; and

(B) all people in the United States have an opportunity to participate in the economic growth of the United States; and

(12) extending technical assistance to community-based economic development organizations may be necessary or desirable—

(A) to alleviate economic distress;

(B) to encourage and support public-private partnerships for the formation and improvement of economic development strategies that promote the growth of the national economy;

(C) to stimulate modernization and technological advances in the generation and commercialization of goods and services; and

(D) to enhance the effectiveness of United States companies in the global economy.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide a new source of Federal funding to enhance the capabilities of nonprofit, nongovernmental, community-based economic development organizations, or collaborations of those organizations, to leverage private sector investment as part of an overall community development strategy;

(2) to establish educational programs for nonprofit, nongovernmental, community-based organizations to expand the project development capabilities of those organizations;

(3) to increase the use of tax incentives to leverage private sector investment in community economic development projects;

(4) to promote and facilitate investments in community-based economic development projects from traditional and nontraditional capital sources;

(5) to encourage partnerships between community-based organizations that will expand and enhance the expertise of emerging nonprofit, nongovernmental organizations in using private sector investment as part of the comprehensive community development strategies of the organizations; and

(6) to ensure that viable community economic development projects are successfully pursued throughout the United States in communities having a wide range of economic, geographic, and social characteristics.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMUNITY-BASED ECONOMIC DEVELOPMENT ORGANIZATION.—

(A) IN GENERAL.—The term ''community-based economic development organization'' means a nonprofit, nongovernmental organization that—

(i) has the primary mission to serve, or provide investment capital for, low-income communities and low-income individuals; and

(ii) either—

(I) maintains accountability to residents of low-income communities through representation of those residents on any governing board of the organization or on any advisory board to the organization; or

(II) maintains accountability to low-income communities by having a governing board that primarily consists of leaders of community-based development organizations from the region or State of the organization.

(B) INCLUSION.—The term ''community-based economic development organization'' includes any faith-based organization that complies with the requirements under clauses (i) and (ii) of subparagraph (A).

(C) TREATMENT OF COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS.—The requirements of subparagraph (A) shall be deemed to be met by any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(2) COMMUNITY ECONOMIC DEVELOPMENT PROJECT.—The term ''community economic development project'' means a project that involves—

(A) investment in business enterprises, including investments in the form of loan origination, equity investment, and monetary assistance to home buyers or to business owners for business development projects; or

(B) the construction or rehabilitation of facilities, including commercial or industrial facilities, homes, apartment buildings, and community parks.

(3) LOW-INCOME COMMUNITY.—The term ''low-income community'' has the meaning given the term in section 45D of the Internal Revenue Code of 1986.

(4) LOW-INCOME INDIVIDUAL.—The term ''low-income individual'' means any individual who—

(A) lives in an area other than a metropolitan area and whose median family income does not exceed 80 percent of the statewide median family income; or

(B) lives in a metropolitan area and whose median family income does not exceed 80 percent of the greater of the statewide median family income or the metropolitan area median family income, as those terms are used in section 45D of the Internal Revenue Code of 1986.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 4. GRANTS TO INCREASE CAPACITY AND EXPERTISE OF NONPROFIT, NONGOVERNMENTAL COMMUNITY-BASED ORGANIZATIONS INVOLVED IN COMMUNITY ECONOMIC DEVELOPMENT ACTIVITIES.

(a) GRANT AUTHORITY.—The Secretary may provide grants under this section only—

(1) to eligible community-based economic development organizations; and

(2) for the purposes described in subsection (c).

(b) ELIGIBLE COMMUNITY-BASED ECONOMIC DEVELOPMENT ORGANIZATION.—

(1) DEFINITION.—In this section, the term ''eligible community-based economic development organization'' means a community-based economic development organization, or a collaboration of organizations (including city or State community economic development associations), that demonstrates management capacity by meeting, as determined by the Secretary, 2 or more of the requirements in paragraph (2).

(2) REQUIREMENTS.—The requirements referred to in paragraph (1), with respect to an eligible community-based economic development organization, are—

(A) completion of construction of 10 or more dwelling units of affordable housing;

(B) completion of construction of a commercial, industrial, retail, or community facility project;

(C) the past or present provision, in partnership with community-based economic development organizations, of training, education, capacity, technical assistance, or other mentoring services;

(D) the exhibition of willingness to form operational partnerships and execute contractual agreements with emerging community-based economic development organizations; and

(E) the possession of tangible assets the value of which is not less than the value of the grant requested under this section.

(c) USE OF FUNDS.—

(1) PURPOSES.—Amounts from a grant provided under this section may be used only—

(A) to pay salaries or administrative expenses of the grantee or an emerging community-based economic development organization that is undertaking a community economic development project;

(B) to provide technical assistance to an emerging community-based economic development organization that is undertaking a community economic development project; or

(C) to conduct training or research, and to carry out technical assistance, relating to community economic development through subgrants under paragraph (2), including subgrants for program evaluation and economic impact analyses.

(2) EXPENDITURE.—Amounts from a grant provided under this section may be—

(A) used directly by the eligible community-based economic development organization receiving the grant; or

(B) redistributed by the recipient to a nonprofit, nongovernmental entity in the form of—

(i) a grant;

(ii) a loan;

(iii) a loan guarantee;

(iv) a payment to reduce interest on a loan guarantee; or

(v) other appropriate assistance.

(d) SELECTION CRITERIA.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall promulgate rules, including guidelines and procedures, to provide for the selection of eligible community-based economic development organizations for grants under this section.

(2) CRITERIA.—The rules promulgated under paragraph (1) shall—

(A) be based on a determination of the relative effectiveness of the organizations in carrying out the purposes of this Act; and

(B) provide for consideration of—

(i) the number of eligible community-based economic development organizations eligible to receive assistance under programs other than this section;

(ii) the extent to which grant amounts provided under this section will enhance the capabilities of community-based economic development organizations in underserved States and localities;

(iii) the extent to which an eligible community-based economic development organization applying for a grant does not have access to other traditional local financial sources;

(iv) the extent to which an eligible community-based economic development organization represents nonprofit, nongovernmental organizations that serve low-income communities and individuals; and

(v) the extent to which an eligible community-based economic development organization will implement a plan to become financially sustainable.

(e) AMOUNT.—A grant provided under this section to a single grantee shall be in an amount that is not less than $250,000 and not greater than $1,000,000.

(f) PROHIBITION OF MATCHING FUNDS REQUIREMENT.—The Secretary may not require a grantee under this section to provide amounts from sources other than this section to fund the specific activities to be carried out with grant amounts provided under this section.

(g) ELIGIBILITY FOR COMMUNITY REINVESTMENT ACT CREDITS.—In determining whether an eligible community-based economic development organization is meeting the credit needs of the community of that organization for the purpose of section 804(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(a)), the appropriate Federal financial supervisory agency (as defined in section 803 of that Act (12 U.S.C. 2902)), in assessing and taking into account the record of any regulated financial institution, may consider as a factor investments in community economic development projects of eligible community-based economic development organizations.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to provide grants under this section $75,000,000 for each of fiscal years 2004 through 2006.

(2) SET-ASIDE FOR TECHNICAL ASSISTANCE AND TRAINING.—

(A) IN GENERAL.—Of the amount made available under this Act for each fiscal year, subject to subparagraph (C), $10,000,000 shall be available only for technical assistance and training activities, to be conducted by organizations described in subparagraph (B).

(B) ORGANIZATIONS.—The organizations referred to in subparagraph (A) are national community development organizations, State community development associations, and city community development associations, that have extensive nationwide partnerships and experience in working with community-based economic development organizations in accordance with section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect on April 30, 2000.

(C) RESERVATION.—Of the amount reserved for use under this paragraph, not less than $4,000,000 shall be used for the support of development organizations in rural areas.

SEC. 5. ASSESSMENT OF COMMUNITY-BASED ECONOMIC DEVELOPMENT EXPERTISE.

(a) CAPABILITY STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a study to assess the capability needs of community-based economic development organizations that—

(A) analyzes, evaluates, and recommends processes to improve the administrative and operational capabilities of the organizations to acceptable levels of success in support of the role of the Federal Government in community economic development; and

(B) assesses the extent to which Federal agencies may—

(i) incorporate the organizations into the formulation of the strategic plans of funding agencies; and

(ii) if the extent or quality of that type of involvement is satisfactory, support the role of the Federal Government in community economic development.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the results of the study under this subsection.

(b) ANNUAL REPORTS TO CONGRESS.—Not later than the first March 1 occurring after the end of each fiscal year for which amounts are made available for grants under section 4, the Secretary shall submit to Congress a report that includes—

(1) an evaluation of the progress made during the fiscal year covered by the report, to enhance the administrative and operational capabilities of community-based economic development organizations in support of the role of the Federal Government in community economic development;

(2) an assessment of the extent to which Federal agencies have, during that fiscal year, involved community-based economic development organizations in—

(A) carrying out community economic development programs administered by the agencies; and

(B) delivering services under those programs that enhance the operational capabilities of the organizations; and

(3) a plan for making recommendations for actions or measures to further involve community-based economic development organizations in the strategic operations of Federal agencies in support of community economic development.

(c) FINAL EVALUATION.—

(1) IN GENERAL.—On termination of the grant program under section 4, the Secretary shall select an independent entity that has experience in national community economic development activities, nonprofit community-based developers, and impact evaluation and analysis to conduct an evaluation of the impact of the grant program.

(2) REPORT.—Not later than 180 days after the conclusion of the last fiscal year for which amounts are made available for grants under section 4, the entity conducting the evaluation under this subsection shall submit to the Secretary and Congress a final report regarding the evaluation.

SEC. 6. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—The Secretary shall establish an advisory council to be known as the ''Secretary's Advisory Council on Community Economic Development'' (referred to in this section as the ''Advisory Council'').

(b) DUTIES.—The Advisory Council shall make recommendations to the Secretary, for use in carrying out this Act, including recommendations on—

(1) developing plans under section 5(b)(3); and

(2) reviewing and making recommendations on plans that have been developed.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Advisory Council shall consist of not less than 19 members, to be appointed by the Secretary, as described in paragraphs (2) and (3).

(2) NONVOTING MEMBERS.—The nonvoting members of the Advisory Council shall be—

(A) the Secretary of Housing and Urban Development;

(B) the Secretary of Health and Human Services;

(C) the Assistant Secretary for Economic Development of the Department of Commerce;

(D) the Administrator of the Community Development Financial Institutions Fund; and

(E) the Under Secretary of Agriculture for Rural Development.

(3) VOTING MEMBERS.—

(A) IN GENERAL.—The Advisory Council shall have not less than 14 voting members, to include—

(i) at least 2 individuals who conduct research on community economic development activities;

(ii) at least 2 individuals who are experts in community economic development financing;

(iii) at least 3 individuals who are publicly elected officials; and

(iv) at least 7 individuals who are representatives of community-based economic development organizations that carry out community economic development activities.

(B) LIMITATION.—No voting member of the Advisory Council may be an officer or employee of the Federal Government.

(d) TRAVEL EXPENSES.—Members of the Advisory Council shall not receive any compensation for service on the Advisory Council, other than travel expenses (including per diem in lieu of subsistence), in accordance with sections 5702 and 5703 of title 5, United States Code.

SEC. 7. COORDINATION WITH THE ANNUAL BUDGET REQUEST OF THE PRESIDENT.

The President of the United States shall include with each annual budget of the Federal Government required to be submitted under section 1105(a) of title 31, United States Code, a report regarding Federal financial support for community economic development that includes—

(1) a detailed summary of the total level of funding committed to community-based economic development organizations by all Federal agencies;

(2) a statement of—

(A) projected funding levels for the grant program under section 4 for the upcoming fiscal year and each fiscal year thereafter until fiscal year 2010; and

(B) projected funding levels for financial assistance for economic development activities for each Federal agency that provides that assistance;

(3) an identification and analysis of the method (including grant agreements, procurement contracts, and cooperative agreements (as those terms are used in chapter 63 of title 31, United States Code)) by which financial assistance is provided for each economic development activity; and

(4) recommendations for specific activities and measures—

(A) to enhance community-based economic development capacity building in States having less concentrated economic and infrastructure resources; and

(B) to strengthen nationwide community-based economic development.

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

S. 1712. A bill to re-establish and reform the independent counsel statute; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I am very pleased to be joining today with Senator LEVIN in introducing the Independent Counsel Reform Act of 2003. With this bill, we hope to convince our colleagues that an improved independent counsel statute can serve an essential purpose. We want to convince our colleagues that our legislation will preserve the ideals that motivated the enactment of this statute in the years after Watergate, that no person is above the law, and that our highest government officials must be subject to our laws in the same way as any other person. If they are guilty, they must be held accountable. If they are not, they must be cleared. In these cases the American people are more likely to trust the findings of an independent counsel's investigation and conclusions. Officials who are wrongly accused will receive vindication that is far more credible to the public than when it comes from the Department of Justice. As a result, the public's confidence in its government is enhanced by the independent counsel statute.

In 1999, as the independent counsel law was expiring, I joined with Senators LEVIN, SPECTER, and COLLINS in introducing the Independent Counsel Reform Act of 1999. That year, we drafted new provisions to curb the excesses we had seen in some of the investigations conducted under the prior incarnation of the law. The revisions ensure that there will be fewer Independent Counsel appointed, and that their actions will in many respects be constrained by the same sorts of guidelines and practical restraints that govern regular federal prosecutors. The bill we are introducing today retains these suggested reforms. In fact, it is virtually identical to the Independent Counsel Reform Act of 1999, with a single exception I will describe in a moment.

We made those substantial changes after the Committee on Governmental Affairs had held five hearings on the Independent Counsel statute. During the hearings we heard from numerous witnesses who had served as Independent Counsel, and as Attorney General, from former prosecutors and from defense attorneys. Many witnesses supported the statute, even defense attorneys who had represented targets in Independent Counsel investigations. Both witnesses who opposed the statute outright, and those who advocated keeping it in some form, suggested a number of improvements to the statute. We carefully considered those recommendations before we sat down to draft a bill that retained the essential features of the old law while reducing its scope, limiting the powers of the Independent Counsel, and bringing greater transparency into the process.

For example, the threshold for seeking the appointment of an Independent Counsel will be raised, so that a greater amount of evidence to back up allegations of criminal conduct will be required. The attorney General will also be entitled for the first time to issue subpoenas for evidence and convene grand juries during the preliminary investigation, and would be given more time to conduct preliminary investigations. This change responds to concerns that, in the past, the Attorney General's hands have been tied during the preliminary investigation stage. With our bill, the Department of Justice will be able to conduct a more substantial preliminary investigation.

In another change that will reduce the number of Independent Counsel appointed, officials covered by the statute will be limited to the President, the Vice President, the President's Chief of Staff, and Cabinet members. This is a major reduction compared to the number of officials covered by the Independent Counsel statute when it expired. The Attorney General will retain the discretionary authority to appoint an Independent Counsel to investigate non-covered individuals when the Attorney General determines that investigation or prosecution by the Department of Justice would result in a personal, financial or political conflict of interest. This discretionary authority was part of the Independent Counsel law from 1983 to 1999; although the provision was not included in the bill we introduced that year, it has been included in this bill because of the promulgation, after our bill was introduced, of new regulations by the Department of Justice.

In many administrations, high level political advisers can have enormous influence, much more even than some Cabinet members. When we first introduced the Independent Counsel Reform Act of 1999, I hoped that criminal allegations against officials not covered by the statute could be handled either by the Department of Justice, or, in cases involving high-level officials or other conflicts of interest, through the appointment by the Attorney General of a Special Counsel. After our bill was introduced, however, then Attorney General Reno issued revised regulations for the appointment of Special Counsel, which provide that the Attorney General may block any investigative or prosecutorial action being pursued by the Special Counsel. The regulations also allow the Attorney General to shut down the investigation entirely, or starve it of funds. These revisions, and others, constituted a major reduction in a Special Counsel's autonomy. As Robert Fiske had testified during our committee hearings in 1999, he accepted his 1994 appointment to be the Whitewater Special Counsel only after satisfying himself that the regulations then in effect granted him the same powers as would have been available to an Independent Counsel. Now, with the variety of control mechanisms in place under the Department's 1999 regulations, it is far too easy for an Attorney General to stifle an investigation in ways less dramatic and less public than actually removing the Special Counsel.

Under the legislation we are introducing today, each Independent Counsel will have to devote his full time to the position for the duration of his tenure. This will prevent the appearance of conflicts that may arise when an Independent Counsel continues with his private legal practice, and it will expedite investigations as well. The Independent Counsel will also be expected to conform his conduct to the written guidelines and established policies of the Department of Justice. The prior version of that requirement contained a loophole, which has been eliminated.

There have been many complaints about runaway prosecutors, who continued their investigations longer than was necessary or appropriate. Our bill will impose a time limit of two years on investigations by Independent Counsel. The Special Division of the Court of Appeals will be able to grant extensions of time, however, for good cause and to compensate for dilatory tactics by opposing counsel. Imposing a time limit with flexibility allows Independent Counsel the time they genuinely need to complete their investigations, and deters defense counsel from using the time limit strategically to escape justice. But the time limit will also encourage future Independent Counsel to bring their investigations to an expeditious conclusion, and not chase down every imaginable lead.

Our bill makes another important change that will prevent expansion of investigations into unrelated areas. Until now the statute has allowed the Attorney General to request an expansion of an Independent Counsel's prosecutorial jurisdiction into unrelated areas. This happened several times with Judge Starr's investigation, and I believe those expansions contributed to a perception that the prosecutor was pursuing the person and not the crime. An Independent Counsel must not exist to pursue every possible lead against his target until he finds some taint of criminality. His function, our bill makes clear, is to investigate that subject matter given him in his original grant of prosecutorial jurisdiction.

We are bringing greater budgetary transparency to the process by directing the Independent Counsel to produce an estimated budget for each year, and by allowing the General Accounting Office to comment on that budget. This greater transparency will provide more incentive for Counsel to budget responsibly.

Another correction we are making is to eliminate entirely the requirement that an Independent Counsel refer evidence of impeachable offenses to the House of Representatives. The impeachment power is one of Congress's essential Constitutional functions, and

no part of that role should be delegated by statute to a prosecutor.

Our bill was unsuccessful in the 106th Congress. Perhaps one of the reasons was that we were still too close to one or two controversial investigations that turned some against the statute; perhaps the wounds were still too raw. Now with a fresh perspective gained through the passage of time, Congress should reconsider what it has given up by allowing the Independent Counsel law to lapse for the past four years. Hopefully, occasions will be few and far between when serious and credible criminal allegations emerge against high-level officials. When this happens, however, the public will question how we can be certain that the incident is being appropriately investigated. Indeed, in the absence of an Independent Counsel law, some may even question whether allegations are as likely to surface in the first place. If people with knowledge of criminal wrongdoing suspect that their information may be covered up rather than acted upon, they would be less likely to take the risk of coming forward.

The controversy that has enveloped the White House in the past week illustrates the need for an Independent Counsel law. According to news reports, two high-level Administration figures, which some reports have placed in the White House, willfully disclosed the name of a covert CIA operative. If true, this disclosure would be a serious criminal law violation, one that may well have endangered not just the covert operative, but the people abroad who worked with her in service to the United States. The disclosures were reportedly made to punish the agent's husband, Ambassador Joseph Wilson, for questioning the accuracy of comments made by the President about Iraq's nuclear weapons program. The Department of Justice recently initiated an investigation, but according to a recent poll the public overwhelmingly prefers that the investigation not be handled by the Department. Although we do not yet know which individuals may be implicated as a result of a thorough investigation, many Americans question whether Attorney General Ashcroft can preside impartially over a probe that could prove very damaging to his close associates in the White House, and to the President. An Independent Counsel statute is absolutely essential so that we have an institutionalized means for addressing allegations such as these. We should not, as we are now, forced into an ad hoc and situationally driven discussion of whether the Department of Justice can investigate a particular case.

I have always believed that the Independent Counsel statute embodies certain principles fundamental to our democracy. The alternative to an Independent Counsel statute is a system in which the Attorney General must decide how to handle substantive allegations against colleagues in the Cabinet, or against the President. Often the President and the Attorney General are long-time friends and political allies. The Attorney General will not be trusted by some to ensure that an unbiased investigation will be conducted. In other cases, many will question the thoroughness of an investigation directed from inside the Department. In a time of great public cynicism about government, the Independent Counsel statute guarantees that even the President and his highest officials will have to answer for their criminal malfeasance. In that sense, this statute upholds the rule of law and will help stem the distrust toward government. The Independent Counsel statute embodies the bedrock American principle that no person is above the law.

I ask unanimous consent that the text of the Independent Counsel Reform Act of 2003 be printed in the RECORD.

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

S. 1712

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 ''Independent Counsel Reform Act of 2003''.

SEC. 2. INDEPENDENT COUNSEL STATUTE.

Chapter 40 of title 28, United States Code, is amended to read as follows:

''CHAPTER 40—INDEPENDENT COUNSEL

''§ 591. Applicability of provisions of this chapter

''(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

''(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—The persons referred to in subsection (a) are—

''(1) the President and Vice President;

''(2) any individual serving in a position listed in section 5312 of title 5; and

''(3) the Chief of Staff to the President.

''(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS.—When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

''(d) EXAMINATION OF INFORMATION TO DETERMINE NEED FOR PRELIMINARY INVESTIGATION.—

''(1) FACTORS TO BE CONSIDERED.—In determining under subsection (a) or section 592(c)(2) whether grounds to investigate exist, the Attorney General shall consider only—

''(A) the specificity of the information received; and

''(B) the credibility of the source of the information.

''(2) TIME PERIOD FOR MAKING DETERMINATION.—The Attorney General shall determine whether grounds to investigate exist not later than 30 days after the information is first received. If within that 30-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 30-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

''(e) RECUSAL OF ATTORNEY GENERAL.—

''(1) WHEN RECUSAL IS REQUIRED.—

''(A) INVOLVING THE ATTORNEY GENERAL.—If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

''(B) PERSONAL OR FINANCIAL RELATIONSHIP.—If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

''(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to that information.

''§ 592. Preliminary investigation and application for appointment of an independent counsel

''(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

''(1) IN GENERAL.—A preliminary investigation conducted under this chapter shall be of those matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make that determination not later than 120 days after the

preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make that determination not later than 120 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of that preliminary investigation and the date of commencement.

''(2) LIMITED AUTHORITY OF ATTORNEY GENERAL.—

''(A) IN GENERAL.—In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to plea bargain or grant immunity. The Attorney General shall have the authority to convene grand juries and issue subpoenas.

''(B) NOT TO BE BASIS OF DETERMINATIONS.—The Attorney General shall not base a determination under this chapter—

''(i) that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that that person lacked the state of mind required for the violation of criminal law; or

''(ii) that there are no substantial grounds to believe that further investigation is warranted, upon a determination that that person lacked the state of mind required for the criminal violation involved, unless there is a preponderance of the evidence that the person lacked that state of mind.

''(3) EXTENSION OF TIME FOR PRELIMINARY INVESTIGATION.—The Attorney General may apply to the division of the court for a single extension, for a period of not more than 90 days, of the 120-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant that extension.

''(b) DETERMINATION THAT FURTHER INVESTIGATION NOT WARRANTED.—

''(1) NOTIFICATION OF DIVISION OF THE COURT.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no substantial grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

''(2) FORM OF NOTIFICATION.—Notification under paragraph (1) shall contain a summary of the information received and a summary of the results of the preliminary investigation.

''(c) DETERMINATION THAT FURTHER INVESTIGATION IS WARRANTED.—

''(1) APPLICATION FOR APPOINTMENT OF INDEPENDENT COUNSEL.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

''(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are substantial grounds to believe that further investigation is warranted; or

''(B) the 120-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether there are substantial grounds to believe that further investigation is warranted, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

''(2) RECEIPT OF ADDITIONAL INFORMATION.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which that notification related, the Attorney General shall—

''(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 120 days after the date on which that additional information is received; and

''(B) otherwise comply with the provisions of this section with respect to that additional preliminary investigation to the same extent as any other preliminary investigation under this section.

''(d) CONTENTS OF APPLICATION.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters directly related to that subject matter.

''(e) DISCLOSURE OF INFORMATION.—Except as otherwise provided in this chapter or as is deemed necessary for law enforcement purposes, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or that office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

''(f) LIMITATION ON JUDICIAL REVIEW.—The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

''(g) CONGRESSIONAL REQUEST.—

''(1) BY JUDICIARY COMMITTEE OR MEMBERS THEREOF.—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

''(2) REPORT BY ATTORNEY GENERAL PURSUANT TO REQUEST.—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with section 591(a). The report shall set forth the reasons for the Attorney General's decision regarding the preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

''(3) SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST.—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), that notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why the application was not made, addressing each matter with respect to which the congressional request was made.

''(4) DISCLOSURE OF INFORMATION.—Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of that report, notification, application, document, material, or memorandum as will not in the committee's judgment prejudice the rights of any individual.

''§ 593. Duties of the division of the court

''(a) REFERENCE TO DIVISION OF THE COURT.—The division of the court to which this chapter refers is the division established under section 49 of this title.

''(b) APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL.—

''(1) AUTHORITY.—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and define the independent counsel's prosecutorial jurisdiction. The appointment shall be made from a list of candidates comprised of 5 individuals recommended by the chief judge of each Federal circuit and forwarded by January 15 of each year to the division of the court.

''(2) QUALIFICATIONS OF INDEPENDENT COUNSEL.—The division of the court shall appoint as independent counsel an individual who—

''(A) has appropriate experience, including, to the extent practicable, prosecutorial experience and who has no actual or apparent personal, financial, or political conflict of interest;

''(B) will conduct the investigation on a full-time basis and in a prompt, responsible, and cost-effective manner; and

''(C) does not hold any office of profit or trust under the United States.

''(3) SCOPE OF PROSECUTORIAL JURISDICTION.—

''(A) IN GENERAL.—In defining the independent counsel's prosecutorial jurisdiction under this chapter, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute—

''(i) the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel; and

''(ii) all matters that are directly related to the independent counsel's prosecutorial jurisdiction and the proper investigation and prosecution of the subject matter of such jurisdiction.

''(B) DIRECTLY RELATED.—In this paragraph, the term 'directly related matters' includes Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that impede the investigation and prosecution, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

''(4) DISCLOSURE OF IDENTITY AND PROSECUTORIAL JURISDICTION.—An independent counsel's identity and prosecutorial jurisdiction may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of that independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of the independent counsel shall be

made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel's investigation.

''(c) RETURN FOR FURTHER EXPLANATION.—Upon receipt of a notification under section 592 from the Attorney General that there are no substantial grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for that determination.

''(d) VACANCIES.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of the removal is completed.

''(e) ATTORNEYS' FEES.—

''(1) AWARD OF FEES.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against that individual pursuant to the investigation, award reimbursement for those reasonable attorneys' fees incurred by the individual during the investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the independent counsel who conducted the investigation and the Attorney General of any request for attorneys' fees under this subsection.

''(2) EVALUATION OF FEES.—The division of the court shall direct the independent counsel and the Attorney General to file a written evaluation of any request for attorneys' fees under this subsection, addressing—

''(A) the sufficiency of the documentation;

''(B) the need or justification for the underlying item;

''(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

''(D) the reasonableness of the amount of money requested.

''(f) DISCLOSURE OF INFORMATION.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

''(g) AMICUS CURIAE BRIEFS.—When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

''§ 594. Authority and duties of an independent counsel

''(a) AUTHORITIES.—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in that independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

''(1) conducting proceedings before grand juries and other investigations;

''(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary;

''(3) appealing any decision of a court in any case or proceeding in which the independent counsel participates in an official capacity;

''(4) reviewing all documentary evidence available from any source;

''(5) determining whether to contest the assertion of any testimonial privilege;

''(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

''(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

''(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

''(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

''(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

''(b) COMPENSATION.—

''(1) IN GENERAL.—An independent counsel appointed under this chapter shall receive compensation at the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

''(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

''(3) TRAVEL TO PRIMARY OFFICE.—

''(A) IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended for successive 6-month periods if the independent counsel and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

''(B) RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), that employee shall consider, among other relevant factors—

''(i) the cost to the Government of reimbursing those travel and subsistence expenses;

''(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

''(iii) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that the travel and subsistence expenses would not be incurred; and

''(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

''(c) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of independent counsel, an independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES–4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5304 of that title regardless of the locality in which an employee is employed.

''(d) ASSISTANCE OF DEPARTMENT OF JUSTICE.—

''(1) IN CARRYING OUT FUNCTIONS.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within that independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform that independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel to the extent the number of staff so detailed is reasonably related to the number of staff ordinarily assigned by the Department to conduct an investigation of similar size and complexity.

''(2) PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL.—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

''(e) REFERRAL OF DIRECTLY RELATED MATTERS TO AN INDEPENDENT COUNSEL.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel only such matters that are directly related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept that referral only if the matter directly relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to

the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

''(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—

''(1) IN GENERAL.—An independent counsel shall comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws except when that policy requires the specific approval of the Attorney General or another Department of Justice official. If a policy requires the approval of the Attorney General or other Department of Justice official, an independent counsel is encouraged to consult with the Attorney General or other official. To identify and understand these policies and policies under subsection (l)(1)(B), the independent counsel shall consult with the Department of Justice.

''(2) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.

''(3) RELIEF FROM A VIOLATION OF POLICIES.—

''(A) IN GENERAL.—A person who is a target, witness, or defendant in, or otherwise directly affected by, an investigation by an independent counsel and who has reason to believe that the independent counsel is violating a written policy of the Department of Justice material to the independent counsel's investigation, may ask the Attorney General to determine whether the independent counsel has violated that policy. The Attorney General shall respond in writing within 30 days.

''(B) RELIEF.—If the Attorney General determines that the independent counsel has violated a written policy of the Department of Justice material to the investigation by the independent counsel pursuant to subparagraph (A), the Attorney General may ask the division of the court to order the independent counsel to comply with that policy, and the division of the court may order appropriate relief.

''(g) DISMISSAL OF MATTERS.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

''(h) REPORTS BY INDEPENDENT COUNSEL.—

''(1) REQUIRED REPORTS.—An independent counsel shall—

''(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

''(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth only the following:

''(i) the jurisdiction of the independent counsel's investigation;

''(ii) a list of indictments brought by the independent counsel and the disposition of each indictment, including any verdicts, pleas, convictions, pardons, and sentences; and

''(iii) a summary of the expenses of the independent counsel's office.

''(2) DISCLOSURE OF INFORMATION IN REPORTS.—The division of the court may release to the Congress, the public, or any appropriate person, those portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make those orders as are appropriate to protect the rights of any individual named in that report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in that report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that the individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to the final report.

''(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of the independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.

''(i) INDEPENDENCE FROM DEPARTMENT OF JUSTICE.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are employees of the Department of Justice for purposes of sections 202 through 209 of title 18.

''(j) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.—

''(1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.—

''(A) INDEPENDENT COUNSEL.—During the period in which an independent counsel is serving under this chapter—

''(i) that independent counsel shall have no other paid employment; and

''(ii) any person associated with a firm with which that independent counsel is associated may not represent in any matter any person involved in any investigation or prosecution under this chapter.

''(B) OTHER PERSONS.—During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, that person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

''(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.—Each independent counsel and each person appointed by that independent counsel under subsection (c) may not—

''(A) for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel; or

''(B) for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

''(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following that termination, represent any person in any matter involving any investigation or prosecution under this chapter.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'firm' means a law firm whether organized as a partnership or corporation; and

''(B) a person is 'associated' with a firm if that person is an officer, director, partner, or other member or employee of that firm.

''(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection. The designated agency ethics official for the Department of Justice shall be the ethics adviser for the independent counsel and employees of the independent counsel.

''(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

''(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel's office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of those records.

''(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

''(3) ACCESS TO RECORDS.—

''(A) IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

''(B) ACCESS BY DEPARTMENT OF JUSTICE.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, those records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

''(C) EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

''(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

''(A) shall be maintained as a separate body of records within the records of the independent counsel; and

''(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in

paragraph (3) (B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

''(l) COST AND ADMINISTRATIVE SUPPORT.—

''(1) COST CONTROLS.—

''(A) IN GENERAL.—An independent counsel shall—

''(i) conduct all activities with due regard for expense;

''(ii) authorize only reasonable and lawful expenditures; and

''(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

''(B) LIABILITY FOR INVALID CERTIFICATION.—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

''(C) DEPARTMENT OF JUSTICE POLICIES.—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds.

''(2) BUDGET.—The independent counsel, after consulting with the Attorney General, shall, within 90 days of appointment, submit a budget for the first year of the investigation and, on the anniversary of the appointment, for each year thereafter to the Attorney General and the General Accounting Office. The General Accounting Office shall review the budget and submit a written appraisal of the budget to the independent counsel and the Committees on Governmental Affairs and Appropriations of the Senate and the Committees on the Judiciary and Appropriations of the House of Representatives.

''(3) ADMINISTRATIVE SUPPORT.—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

''(4) OFFICE SPACE.—The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. The office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until the office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies.

''(m) EXPEDITED JUDICIAL CONSIDERATION AND REVIEW.—It shall be the duty of the courts of the United States to advance on the docket and to expedite to the greatest extent possible the disposition of matters relating to an investigation and prosecution by an independent counsel under this chapter consistent with the purposes of this chapter.

''§ 595. Congressional oversight

''(a) OVERSIGHT OF CONDUCT OF INDEPENDENT COUNSEL.—

''(1) CONGRESSIONAL OVERSIGHT.—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and the independent counsel shall have the duty to cooperate with the exercise of that oversight jurisdiction.

''(2) REPORTS TO CONGRESS.—An independent counsel appointed under this chapter shall submit to the Congress annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. The report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

''(b) OVERSIGHT OF CONDUCT OF ATTORNEY GENERAL.—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to the case:

''(1) When the information about the case was received.

''(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

''(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of that filing.

''§ 596. Removal of an independent counsel; termination of office

''(a) REMOVAL; REPORT ON REMOVAL.—

''(1) GROUNDS FOR REMOVAL.—

''(A) IN GENERAL.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that impairs the performance of that independent counsel's duties.

''(B) GOOD CAUSE.—In this paragraph, the term 'good cause' includes—

''(i) a knowing and material failure to comply with written Department of Justice policies relevant to the conduct of a criminal investigation; and

''(ii) an actual personal, financial, or political conflict of interest.

''(2) REPORT TO DIVISION OF THE COURT AND CONGRESS.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for the removal. The committees shall make available to the public that report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of the report in accordance with section 594(h)(2).

''(3) JUDICIAL REVIEW OF REMOVAL.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

''(b) TERMINATION OF OFFICE.—

''(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL.—An office of independent counsel shall terminate when—

''(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete those investigations and prosecutions; and

''(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

''(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete those investigations and prosecutions. At the time of that termination, the independent counsel shall file the final report required by section 594(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel.

''(3) TERMINATION AFTER 2 YEARS.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the term of an independent counsel shall terminate at the expiration of 2 years after the date of appointment of the independent counsel and any matters under investigation by the independent counsel shall be transferred to the Attorney General.

''(B) EXCEPTIONS.—

''(i) GOOD CAUSE.—An independent counsel may petition the division of the court to extend the investigation of the independent counsel for up to 1 year for good cause. The division of the court shall determine whether the grant of such an extension is warranted and determine the length of each extension.

''(ii) DILATORY TACTICS.—If the investigation of an independent counsel was delayed by dilatory tactics by persons that could provide evidence that would significantly assist the investigation, an independent counsel may petition the division of the court to extend the investigation of the independent counsel for an additional period of time equal to the amount of time lost by the dilatory tactics. If the division of the court finds that dilatory tactics did delay the investigation, the division of the court shall extend the investigation for a period equal to the delay.

''(c) AUDITS.—

''(1) IN GENERAL.—On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

''(2) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall—

''(A) conduct a financial review of a mid-year statement and a financial audit of a

year-end statement and statement on termination; and

''(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Reform, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each statement.

''§ 597. Relationship with Department of Justice

''(a) SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding that matter, except to the extent required by section 594(d)(1), and except insofar as the independent counsel agrees in writing that the investigation or proceedings may be continued by the Department of Justice.

''(b) PRESENTATION AS AMICUS CURIAE PERMITTED.—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

''§ 598. Severability

''If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by that invalidation.

''§ 599. Termination of effect of chapter

''This chapter shall cease to be effective 5 years after the date of enactment of the Independent Counsel Reform Act of 2003, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of that counsel require the continuation until that independent counsel determines those matters have been completed.''.

SEC. 3. ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT INDEPENDENT COUNSELS.

Section 49 of title 28, United States Code, is amended to reads as follows:

''§ 49. Assignment of judges to division to appoint independent counsels

''(a) IN GENERAL.—Beginning with the 3-year period commencing on the date of the enactment of the Independent Counsel Reform Act of 2003, 3 judges shall be assigned for each successive 3-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of the division of the court and shall provide such services as are needed by the division of the court.

''(b) OTHER JUDICIAL ASSIGNMENTS.—Except as provided in subsection (e), assignment to the division of the court shall not be a bar to other judicial assignments during the term of the division of the court.

''(c) DESIGNATION AND ASSIGNMENT.—The Chief Justice of the United States shall designate and assign by a lottery of all circuit court judges, 3 circuit court judges 1 of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to the division of the court. Not more than 1 judge may be named to the division of the court from a particular court.

''(d) VACANCY.—Any vacancy in the division of the court shall be filled only for the remainder of the 3-year period in which that vacancy occurs and in the same manner as initial assignments to the division of the court were made.

''(e) RECUSAL.—Except as otherwise provided in chapter 40 of this title, no member of the division of the court who participated in a function conferred on the division of the court under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter that—

''(1) involves that independent counsel while the independent counsel is serving in that office; or

''(2) involves the exercise of the independent counsel's official duties, regardless of whether the independent counsel is still serving in that office.''.

By Ms. SNOWE (for herself, Mr. PRYOR, and Mr. BOND):

S. 1713. A bill to amemd title IV of the Small Business Investment Act of 1958, relating to pilot program for credit enhancement guarantees on pools of non-SBA loans; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today to introduce the Small Business Credit Liquidity Act of 2003, and I am pleased to be joined by my colleagues, Senator PRYOR and Senator BOND, as sponsors of this bill.

The genesis of this legislation was a proposal made by the Small Business Administration. When the President's Fiscal Year 2004 budget request was transmitted to the Congress this past February, it stated that the SBA was exploring a possible new approach to expand the opportunities of small businesses to access capital markets by facilitating the securitization of non-SBA small business loans, i.e., loans that were not already guaranteed by the SBA. Increasing access to capital is a high priority of small businesses, and has been one of the Committee's priorities throughout its history. We are always seeking innovative ways to increase access to capital for small businesses, while at the same time measuring the cost and risk of loss that the Federal government must incur to facilitate such financing. Accordingly, we recognized the potential benefits of this proposal for small businesses across the Nation.

At our roundtable on April 30, 2003, the Committee discussed the idea of the securitization of non-SBA small business loans. The SBA reported that it had been exploring this type of program for some time and thought the idea had considerable merit. The agency was uncertain, however, whether it had the statutory authority to develop and implement such a program, absent legislative authorization. After the roundtable, we consulted with the SBA and with participants in the small business financing industry to determine the program's appropriate elements.

In addition to the support the SBA expressed for the proposal in its budget request, at the Committee's roundtable, and in subsequent discussions with Committee staff, the SBA took other steps to help make the proposal a success. For example, the agency entered into a contract with Dun & Bradstreet and with Fair, Isaacs, Co., to create a credit scoring model for small businesses, similar to individual consumer credit scores, to help small businesses gauge their credit quality. The scoring model will be an important asset to the pooling proposal by providing uniformity of pricing, thus reducing one obstacle to the securitization of non-SBA small business loans. The Office of Advocacy of the SBA has also helped build support for the proposal by publicizing the need to take the foundational steps to build a secondary market for small business loans, rather than later trying to create such a market in one step when economic pressures called for an immediate response.

Support for a program to securitize small business loans has also been advocated by the Board of Governors of the Federal Reserve System. In its September 2002 Report to the Congress on the Availability of Credit to Small Businesses, the Federal Reserve stated that the securitization of small business loans could ''substantially influence the availability of credit'' to small businesses. The Federal Reserve noted that one primary benefit of a secondary market would be that small business borrowers could enjoy lower financing costs.

In addition to the Federal Reserve report, other studies have shown that small businesses could benefit from an efficient secondary market for small business loans. Several, including the Federal Reserve report, have noted that a primary obstacle to a widespread secondary market for small business loans has been the lack of standardized information to evaluate and price small business loans efficiently for resale. As noted, the SBA has exercised foresight by securing the contract with Dun & Bradstreet and Fair, Isaacs to address this problem. With the information provided by this new credit-scoring model, the securitization of non-SBA small business loans will be far more feasible.

With input from the SBA, small businesses, and financial firms in hand, and having considered many studies regarding small business credit and the effectiveness of secondary markets, we included a provision similar to this Act in S. 1375, the Small Business Administration 50th Anniversary Reauthorization Act of 2003, which was approved unanimously by the Committee on July 10, 2003.

Working with Senator PRYOR and with other colleagues, we endeavored to provide sufficient specificity in the instructions the legislation gives the SBA regarding the pilot program, so as to ensure that the pooling proposal provides the greatest benefit to small businesses in need of capital while limiting risk to the Federal government.

Unfortunately, despite all the hard work and input from the SBA and from other participants in the small business financing industry, some apparently either failed to recognize or understand the benefits for small businesses that exist in this idea that originated with the SBA. In the interest of expediting the passage of S. 1375 before the SBA's authorizing legislation expired, I reluctantly removed that provision from S. 1375 to focus on those elements of the bill that had to be enacted before the legislation expired. I continue to appreciate the benefits of this proposal, and I am now introducing this provision as a separate bill. With the support this proposal already has, I am confident we can implement this innovative program, and I look forward to the benefits it can provide as we try to assist small businesses to prosper, create more jobs, and pull the economy out of its current doldrums.

The Small Business Credit Liquidity Act of 2003 authorizes the Small Business Administration (SBA) to develop and implement an innovative three-year pilot program to facilitate the securitization of small business loans in order to increase the liquidity of capital available to small businesses. Under the pilot program, the SBA could provide partial guarantees on pools of securitized small business loans that are not otherwise guaranteed by the SBA. The legislation seeks to increase capital available to small businesses, without creating additional risk for the government since the SBA's guarantees would be paid for by fees charged to the financial firms administering the pooling of loans, and thus no appropriations will be necessary.

I believe this pilot program has a great potential to provide increased access to capital on terms that are beneficial to small businesses. The pilot program will also allow lenders, including small lenders such as community banks, to utilize their capital better, and make more loans available to small businesses on better terms, by increasing the liquidity of existing loans.

The pooling structure is based on similar arrangements for home mortgages, credit card loans, and car loans, which have active secondary markets based upon their pooling and securitization. The increased liquidity of loans provided by a secondary market allows lenders to be confident that the loans they make can be sold to investors, so that the lenders can utilize again capital that is otherwise locked into existing loans. In addition, because lenders receive a quick ''turnaround'' on the loans that they make and then sell to investors, the profit that the lenders receive from the interest rates charged to borrowers becomes less important for the lenders, who can receive a smaller per-loan profit, but increase the number of loans they make, and thereby receive a greater profit. Lenders are thus able to make more loans and to provide better terms to borrowers on those loans.

As Chair of the Committee on Small Business, I realize that access to credit for small businesses is often a challenge. The Committee has consistently found that encouraging more lending to small businesses that have a likelihood to succeed, grow, and create new jobs is a sound national policy. The pilot program takes advantage of the successful example of the prior securitizations of SBA small business loans, and of changes in the investment community, to facilitate lending in the small business community for years to come.

This pilot program is not a departure from the SBA's current practice of guaranteeing loans and regulating the securitization of those loans. The SBA already regulates the securitization of both guaranteed portions of 7(a) and 504 loans to small businesses and non-guaranteed portions of the same loans. These loans are made both by Federally-regulated lenders and by lenders that are not federally regulated. In Fiscal Year 2002, the SBA regulated the securitization of $3.4 billion in government-guaranteed 7(a) loans to small businesses. When the guaranteed portions of the 7(a) loans are securitized separately from the non-guaranteed portions, the SBA is guaranteeing 100 percent of the loan pools.

This bill authorizes a pilot program with a much more modest SBA involvement than is represented by the SBA's current financing programs. Under the pilot program, financial firms approved by the SBA would pool loans not individually guaranteed by the SBA. These pooling entities would then issue securities offering returns based upon the returns from the loans in the pool. The securities would be rated by a rating agency and sold to investors.

The pooling entities, also known as ''loan poolers,'' would also offer a partial ''first-loss'' guarantee to investors on the securities' returns. If the loans had insufficient returns to pay the expected returns on the securities, the pooling entities' guarantees would be the first guarantees called into performance to pay investors. The SBA would issue partial, not complete, ''second-loss'' guarantees on the return from the securities, but not on individual loans within the pool. The agency's guarantees would thus be available only after the first-loss guarantees offered by the loan poolers are exhausted.

Significantly, the cost of the SBA guarantees will be fully funded by fees paid by the loan poolers, so no Federal appropriations will be necessary. The bill provides that the SBA will adjust the fees required from the poolers under the pilot program annually, as necessary.

The legislation also includes other provisions to ensure that the pilot program will not lead to increased risk or liability for the government. In particular, it caps the SBA's guarantees on any loan pool at a maximum of 25 percent of the value of the securities issued for that loan pool. In contrast, the SBA's guarantees for the 7(a) and 504 loan programs are as high as 90 percent and 40 percent, respectively, of each loan in those programs. Moreover, in the 504 loan program the SBA is in a first-loss position, sustaining the loss of its full guaranteed amount on a defaulted loan before the private lender incurs any loss, whereas in the pilot program the SBA will be in a second-loss position.

In addition, the bill requires that firms licensed as loan poolers adhere to certain standards, such as being well-capitalized and maintaining sufficient reserves. The bill also provides that the SBA will set standards for the licensed poolers and will review these entities annually to verify that they are conforming with SBA requirements. Among the requirements the SBA would establish for such loan poolers would be standards relating to loan delinquency, default, liquidation, and loss rates. If any licensed loan pooler fails to meet the SBA's standards, the SBA may terminate the pooler's participation in the pilot program.

To ensure that the pilot program is initially implemented on a manageable scale, the legislation specifies that no individual loan pool created by a licensed pooler will exceed $350 million in loans in fiscal year 2004, $400 million in loans in fiscal year 2005, or $450 million in loans in fiscal year 2006. The bill also specifies that the SBA's total guarantees under the pilot program will not exceed $2.1 billion for fiscal year 2004, $3.25 billion for fiscal year 2005, or $4.5 billion for fiscal year 2006.

Finally, this legislation requires three separate types of reports to ensure that the pilot program is properly monitored and evaluated. First, the SBA must provide to the Senate and House Committees on Small Business a report detailing the pooling program before it is implemented, and wait 50 days after submitting the report before implementing the program. In addition, the SBA must file with the Congress, in the SBA's Budget Request and Performance Plan, an annual report about the program's performance. To strengthen the on-going oversight of the pilot program, the bill also specifies that the SBA's annual report to Congress will include information about the pooled loans, including delinquency, default, loss, and recovery rates. Third, the GAO is required to study the program once implemented, and report on the program's performance, including any effects the program may have on the 504 or 7(a) programs, before calendar year 2006.

My Small Business Committee has received expressions of support for the pilot program from representatives of thousands of small businesses that believe the program could improve access to capital, and could improve the terms of loans received, for many small businesses, particularly those without significant real estate property to use as

collateral. In particular, support for the program has been expressed by minority-owned small businesses and by women-owned small businesses. For these small businesses, which often have less real estate collateral than other small businesses, this pilot program holds great potential for creating capital resources to meet their financing needs.

For instance, a recent study by the SBA's Office of Advocacy, issued in September 2003, reveals that small businesses owned by women are more likely than other small businesses to rely on expensive personal credit cards to finance the business, rather than more traditional types of loans. For these small businesses, an increase in the availability of traditional business loans, with lower financing costs and on terms beneficial to the borrowers, would be a welcome development.

In addition, the same study showed that minority-owned small businesses, in addition to being less likely than other small businesses to obtain credit, were far less likely to obtain their credit from traditional Federally regulated depository institutions, and were more likely to resort to financing their businesses through sources such as family, friends, and acquaintances of the business owners. While this bill does not address subjective lender behavior, it does address the objective cost/profit opportunity presented to a lender by a loan to a small business, including a minority-owned or women-owned small business. If a lender is able to sell a conventional small business loan in an efficient secondary market, the potential downside cost of the loan to the lender, e.g., its default risk, is decreased, and the lender is assured that its capital will still be available for other loans.

Financial firms currently involved in the pooling and securitization of loans issued in the SBA's two primary loan guaranty programs, under Section 7(a) of the Small Business Act (''7(a) loans'') and under Section 504 of the Small Business Investment Act of 1958 (''504 loans''), have also expressed their support for the program, and have stated their belief that it will increase small businesses' access to effective capital.

In closing, the Small Business Credit Liquidity Act of 2003 is an innovative approach to a persistent problem for small businesses in this country—access to capital. I believe it has the potential to address this problem for small businesses with effectively no risk to the Federal Government. At a time when our small enterprises are helping to lead the country back onto the road to economic recovery, we should be doing all we can to eliminate obstacles facing small businesses, which hold the greatest potential for job creation in America today. This bill is an important step in that direction, and I urge my colleagues to join me in supporting its enactment.

I ask unanimous consent that the text of the bill and a summary of its provision be printed in the RECORD.

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

SMALL BUSINESS CREDIT LIQUIDITY ACT OF 2003

SUMMARY OF PROVISIONS

The Small Business Credit Liquidity Act of 2003 authorizes the Small Business Administration (SBA) to develop a three-year pilot program to facilitate the securitization of small business loans, and thereby improve the opportunities for small businesses to obtain capital by increasing the liquidity of small business loans.

Under the pilot program:

Financial firms, after being licensed by the SBA, would create ''pools'' of conventional small business loans, i.e., small business loans not individually guaranteed by the SBA.

These financial firms, also known as ''loan poolers,'' would then issue securities, rated by rating agencies, which would offer returns based upon the returns from the loans in the pools. The securities would be sold to private investors.

The loan poolers would offer partial ''first-loss'' guarantees to investors on the securities' returns (i.e., on the pools themselves, rather than on individual loans). If the loans had insufficient returns to pay the expected returns on the securities, the pooling entities' guarantees would be the first guarantees called into performance to pay investors.

The SBA would issue additional guarantees, on the pools rather than on individual loans, that would be in a ''second loss'' position, meaning that the private investors would receive the full first-loss guarantees from the loan poolers before any SBA guarantee was applied. The SBA's second-loss guarantees for each pool would be limited to 25 percent of the size of that pool.

The SBA's second-loss guarantees would be funded exclusively through fees paid by loan poolers, and would therefore require no appropriated funds.

The SBA would be required to report its plan for the program to the Senate and House Committees on Small Business before implementing the program. The SBA would also be required to file with the Congress, in the agency's Budget Request and Performance Plan, an annual report about the program's performance. In addition, the General Accounting Office (GAO) would be required to study the pilot program after it began and analyze its results.

To ensure that the pilot program is initially implemented on a manageable scale, loan pools under the pilot program would have maximum individual sizes beginning at $350 million for fiscal year 2004 and increasing to $450 million for fiscal year 2006. In addition, the SBA's guarantees would be limited to maximum amounts of $2.1 billion for fiscal year 2004, $3.25 billion for fiscal year 2005, and $4.5 billion for fiscal year 2006.

The program will sunset at the end of fiscal year 2006 unless it is reauthorized by Congress.

S. 1713

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 ''Small Business Credit Liquidity Act of 2003''.

SEC. 2. PILOT PROGRAM FOR GUARANTEES ON POOLS OF NON-SBA LOANS.

Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.) is amended by adding at the end the following:

''PART C—CREDIT ENHANCEMENT GUARANTEES

''SEC. 420. (a)(1) The Administration is authorized, upon such terms and conditions as it may prescribe, in order to encourage lenders to increase the availability of small business financing by improving such lenders' access to reasonable sources of funding, to provide a credit enhancement guarantee, or commitment to guarantee, of the timely payment of a portion of the principal and interest on securities issued and managed by not less than 2 qualified entities authorized and approved by the Administration.

''(2) The entities authorized under this subsection to act as issuers and managers of pools or trusts of loans shall be well-capitalized, as defined by the Administration, and shall maintain sufficient reserves to allow securities to be issued representing interests in each pool or trust that are rated as investment grade by a nationally-recognized rating agency.

''(3) The authority of the entities authorized under this subsection shall be reviewed annually by the Administration and may be renewed upon the satisfactory completion of such review.

''(4) The Administration shall set and maintain standards for entities authorized under this subsection, including standards relating to delinquency, default, liquidation, and loss rates.

''(5) If an entity authorized under this subsection fails to meet the standards set pursuant to paragraph (4), the Administration may terminate the entity's participation in the pilot program under this subsection.

''(b)(1)(A) The Administration may provide its credit enhancement guarantees in respect of securities that represent interests in, or other obligations issued by, a trust, pool, or other entity whose assets (other than the Administration's credit enhancement guarantee and credit enhancements provided by other parties) consist of loans made to small business concerns.

''(B) As used in this paragraph, the term 'small business concern' has the meaning given that term in either the Small Business Act (15 U.S.C. 631 et seq.) or this Act (15 U.S.C. 661 et seq.).

''(2) The credit enhancement guarantees provided by the Administration under paragraph (1) shall be second-loss guarantees that are only available after the full payment of credit enhancement guarantees offered by the entities authorized to act as issuers and managers of pools or trusts of loans under this section.

''(3) A pool or trust of loans shall not be eligible for guarantees under this section—

''(A) if the value of such loans exceeds $350,000,000 in fiscal year 2004;

''(B) if the value of such loans exceeds $400,000,000 in fiscal year 2005; or

''(C) if the value of such loans exceeds $450,000,000 in fiscal year 2006.

''(4) All loans under paragraph (1) shall be originated, purchased, or assembled and managed consistent with requirements prescribed by the Administration in connection with this credit enhancement guarantee program.

''(5) The Administration shall prescribe requirements to be observed by the issuers and managers of the securities covered by credit enhancement guarantees to ensure the safety and soundness of the credit enhancement guarantee program.

''(c) The full faith and credit of the United States is pledged to the payment of all amounts the Administration may be required to pay as a result of credit enhancement guarantees under this section.

''(d)(1) The Administration may issue credit enhancement guarantees in an amount—

''(A) not to exceed $2,100,000,000 in fiscal year 2004;

''(B) not to exceed $3,250,000,000 in fiscal year 2005; and

''(C) not to exceed $4,500,000,000 in fiscal year 2006.

''(2) The Administration shall set the percentage and priority of each credit enhancement guarantee on issued securities at a level not to exceed 25 percent of the value of the securities so that the amount of the Administration's anticipated net loss (if any) as a result of such guarantee is fully reserved in a credit subsidy account funded wholly by fees collected by the Administration from the issuers or managers of the pool or trust.

''(3) The Administration shall charge and collect a fee from the issuer based on the Administration's guaranteed amount of issued securities, and the amount of such fee shall equal the estimated credit subsidy cost of the Administration's credit enhancement guarantee.

''(4) The fees provided for under this subsection shall be adjusted annually, as necessary, by the Administration.

''(5) The Federal government shall not appropriate any funds to finance credit enhancement guarantees under this section.

''(e) REPORT AND ANALYSIS.—

''(1) REPORT.—

''(A) IN GENERAL.—During the development and implementation of the pilot program, the Administrator shall submit a report on the status of the pilot program under this section to Congress in each annual budget request and performance plan.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include, among other items, information about the loans in the pools or trusts, including delinquency, default, loss, and recovery rates.

''(2) ANALYSIS AND REPORT.—Not later than December 30, 2005, the Comptroller General shall—

''(A) conduct an analysis of the pilot program under this section; and

''(B) submit a report to Congress that contains a summary of the analysis conducted under subparagraph (A) and a description of any effects, not attributable to other causes, of the pilot program on the lending programs under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and title V of this Act.

''(3) IMPLEMENTATION.—

''(A) REPORT.—After completing operational guidelines to carry out the pilot program under this section, the Administration shall submit a report, which describes the method in which the pilot program will be implemented, to—

''(i) the Committee on Small Business and Entrepreneurship of the Senate; and

''(ii) the Committee on Small Business of the House of Representatives.

''(B) TIMING.—The Administration shall not implement the pilot program under this section until the date that is 50 days after the report has been submitted under subparagraph (A).

''(f) SUNSET PROVISION.—This section shall remain in effect until September 30, 2006.''.

By Mr. CORZINE:

S. 1714. A bill to amend the National Housing Act to increase the maximum mortgage amount limit for FHA-insured mortgages for multifamily housing located in high-cost areas; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, today I am introducing legislation, the FHA Multifamily Housing Loan Limit Adjustment Act of 2003, that will improve access to affordable housing for families living in high cost areas where there is a shortage of such housing. This bill was introduced earlier this year by Congressmen GARY MILLER (R–CA) and BARNEY FRANK (D–MA) and was recently approved by the House Financial Services Committee.

The Multifamily Housing Loan Limit Adjustment Act of 2003 is supported by housing and community advocates and has also been endorsed by the National Association of Home Builders, the National Association of Realtors, the Mortgage Bankers Association, the Manufactured Housing Institute, and the National Affordable Housing Management Association.

The Federal Housing Administration's Multifamily Housing programs are among HUD's most successful. The Federal Government has tried a number of different approaches to providing housing over the last 50 years. The most successful of these rely heavily on a public/private partnership that encourages the private sector to produce housing with support from the Federal Government. The FHA mortgage insurance programs have been extremely successful in producing new and rehabilitated housing with little or no cost to the Federal Government.

As you know, rising construction costs have resulted in a shortage of moderately priced affordable rental units. Rent increases now exceed inflation in all regions of the country, and new affordable rental units have become increasingly harder to find. Because of the current dollar limits on loans, FHA insurance cannot be used to help finance construction in high-cost urban areas such as the New York/New Jersey metropolitan area, Philadelphia and San Francisco.

HUD statistics demonstrate this—in 2002 and 2003, no multifamily loans have been FHA insured in New York City, Philadelphia, Los Angeles, Seattle, Massachusetts, or New Jersey.

Increasing the limits on loans for rental housing would create more incentives for public/private investment in communities through America and spur the new production of cooperative housing projects, rental housing for the elderly and new construction or substantial rehabilitation of apartments by for- and non-profit entities.

The National Association of Home Builders estimates that increasing the limits in high cost areas will allow for an additional 6,000 units of rental housing to be built each year in the cities limited by the current law. These 6,000 units will generate $318 million in new income to the residents and businesses in these cities, $38 million in added revenues to the local governments, and 6,720 new jobs. Over a ten year period, the cumulative effects of the additional building will contribute $9 billion in new income to the cities where the limits currently constrain new rental production.

While Congress approved legislation I introduced in 2001 to increase the statutory limits for FHA-insured multifamily project loans to account for inflation, we failed to act on a key provision in my bill to raise the loan limits for high cost areas. I am reintroducing that portion of my bill gain, with the hope that two years later, we can finally achieve the increases we need to make the FHA multifamily programs succeed in all our communities, particularly in those high costs areas that so desperately need additional affordable rental housing.

There is currently no HUD program designed to provide rental housing for working families from 60 percent to 100 percent of median income who are unable to find decent, affordable housing near where they work. Yet, the most recent Census data reveals that these working families, including vital municipal workers like teachers and police officers, are increasingly vulnerable and the lack of decent, affordable housing is increasingly being seen as a significant impediment to local economic growth. This is one reason why the FHA multifamily programs are so important.

Without this much-needed adjustment to the FHA multifamily loan limits, access to affordable housing for our working-citizens will continue to lag, thousands of more families will join the 14 million people who currently face severe housing needs and our nation's economy will suffer.

I hope my Senate colleagues will support the legislation and help ensure that America's working families have access to affordable housing.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1714

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 ''FHA Multifamily Loan Limit Adjustment Act of 2003''.

SEC. 2. MAXIMUM MORTGAGE AMOUNT LIMIT FOR MULTIFAMILY HOUSING IN HIGH-COST AREAS.

Sections 207(c)(3)(B), 213(b)(2)(B)(i), 220(d)(3)(B)(iii)(II), 221(d)(3)(ii)(II), 221(d)(4)(ii)(II), 231(c)(2)(B), and 234(e)(3)(B) of the National Housing Act (12 U.S.C. 1713(c)(3)(B), 1715e(b)(2)(B)(i), 1715k(d)(3)(B)(iii)(II), 1715*l*(d)(3)(ii)(II), 1715*l*(d)(4)(ii)(II), 1715v(c)(2)(B)), and 1715y(e)(3)(B)) are each amended—

(1) by striking ''110 percent'' and inserting ''170 percent''; and

(2) by striking ''140 percent'' and inserting ''170 percent''.

SEC. 3. CATCH-UP ADJUSTMENTS TO CERTAIN MAXIMUM MORTGAGE AMOUNT LIMITS.

(a) SECTION 207 LIMITS.—Section 207(c)(3)(A) of the National Housing Act (12 U.S.C. 1713(c)(3)(A)) is amended by striking ''$11,250'' and inserting ''$17,460''.

(b) SECTION 213 LIMITS.—Section 213(b)(2)(A) of the National Housing Act (12 U.S.C. 1715e(b)(2)(A)) is amended—

(1) by striking ''$38,025'' and inserting ''$41,207'';

(2) by striking ''$42,120'' and inserting ''$47,511'';

(3) by striking ''$50,310'' and inserting ''$57,300'';

(4) by striking ''$62,010'' and inserting ''$73,343'';
(5) by striking ''$70,200'' and inserting ''$81,708'';
(6) by striking ''$49,140'' and inserting ''$49,710'';
(7) by striking ''$60,255'' and inserting ''$60,446'';
(8) by striking ''$75,465'' and inserting ''$78,197''; and
(9) by striking ''$85,328'' and inserting ''$85,836''.

NAHMA, NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION,
Alexandria, VA, October 2, 2003.

Hon. JON S. CORZINE.
U.S. Senate, 502 Senate Hart Building, Washington, DC.

DEAR SENATOR CORZINE: I am writing to convey the National Affordable Housing Management Association's (NAHMA) strong support for the FHA Multifamily Housing Loan Limit Adjustment Act.

NAHMA represents owners and individuals involved with the management of affordable multifamily housing developments. Affordable properties owned and managed by NAHMA members are subject to the regulations of federal agencies including the U.S. Department of Housing and Urban Development, the U.S. Rural Housing Service, and the Internal Revenue Service. NAHMA members provide quality affordable housing to more than two million Americans with very low and moderate incomes. Executives of property management companies, owners of affordable rental housing, public agencies and vendors that serve the affordable housing industry constitute NAHMA's membership.

The FHA multifamily insurance programs are an important component of any affordable housing strategy. Your legislation, which increases the maximum Federal Housing Administration (FHA) multifamily mortgage loan limits in high cost areas from 110 to 170 percent above the base loan limits, will help increase the availability of affordable housing for low-to-moderate income families. This bill will encourage production of multifamily developments in some of the most expensive areas in the nation—where affordable housing is often desperately needed.

NAHMA is pleased to offer its strong support for the FHA Multifamily Housing Loan Limit Adjustment Act. I look forward to working with you to advance this important legislation.

Sincerely,

KRIS COOK, CAE,
Executive Director.

NATIONAL ASSOCIATION OF REALTORS, NATIONAL ASSOCIATION OF HOME BUILDERS, MORTGAGE BANKERS ASSOCIATION,
October 2, 2003.

Hon. JON S. CORZINE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR CORZINE: On behalf of the membership of our associations who represent the home buying, home building, and home financing industries, we are writing in support of legislation you intend to introduce to increase the Federal Housing Administration (FHA) multifamily loan limits in high-cost areas. Over the past 2 years, Congress and the Administration have taken steps to update the FHA multifamily loan limits. However, one final hurdle remains since the current maximum FHA multifamily mortgage limits are inadequate and continue to constrain new construction and rehabilitation in many urban and suburban areas, where construction costs are significantly higher than in the rest of the country.

The FHA's multifamily mortgage insurance programs enable qualified borrowers to obtain long-term, fixed-rate, nonrecourse, financing for a variety of multifamily properties that are affordable to low- and moderate-income families. This public/private partnership has resulted in a successful program providing housing for a portion of the population not usually served by private industry alone. In addition to serving a valuable purpose, according to recent calculations by HUD and OMB indicate that virtually all of the FHA multifamily insurance programs operate on a break-even basis or raise revenue for the government.

Without higher FHA multifamily loan limits in high-cost markets, critical housing needs will go unmet. Those who will be most affected will include low- and moderate-income families, including important community service providers such as teachers, firefighters, and police officers. By increasing the maximum loan limit for FHA's multifamily programs, these programs can help provide the housing opportunities necessary for the economic and social well being of our Nation. We applaud your efforts to increase the availability of affordable housing in our Nation's high-cost areas.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 1715. A bill to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by Senator INOUYE in introducing the Department of Interior Tribal Self Governance Amendments of 2003, a bill that is a companion to the bill we introduced yesterday, the Department of Health and Human Services Tribal Self Governance Amendments of 2003.

Taken together, these bills will strengthen the government-to-government relationship between the United States and Indian tribes by shepherding in the next phase of Indian Self Governance.

Due to the Federal reservation status of Indian lands, the Department of the Interior, among all Federal agencies, has historically had the most significant impact on the lives of Indians.

This longstanding relationship with Indian tribes has often been stormy, with Federal bureaucrats providing all or nearly all services to Indian tribes and their members, including police, fire, education and health care services.

The Federal-tribal relationship took a decided turn for the better in 1975 with the enactment of the Indian Self Determination and Education Assistance Act of 1975, Pub. L. 93–638. Since passage of Pub. L. 93–638, Congress has systematically devolved to Indian tribes the authority and responsibility to manage Federal programs within the Bureau of Indian Affairs and the Indian Health Service.

The bill I am introducing today will expand the provisions of Self Governance within the Department of the Interior by creating a Demonstration Project within the Department of the Interior for non-BIA programs.

This Demonstration Project is integral to the continued success of Self Governance for Indians, as there remain many non-BIA programs with the Department that affect the ability of Indian tribes to better serve their members.

I urge my colleagues to join me in supporting this important 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. 1715

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 ''Department of the Interior Tribal Self-Governance Act of 2003''.

SEC. 2. AMENDMENT.

The Indian Self-Determination and Education Assistance Act is amended by striking title IV (25 U.S.C. 458aa et seq.) and inserting the following:

''TITLE IV—TRIBAL SELF-GOVERNANCE

''SEC. 401. DEFINITIONS.

''In this title:

''(1) COMPACT.—The term 'compact' means a compact under section 404.

''(2) CONSTRUCTION PROGRAM.—The term 'construction program' means a tribal undertaking to complete any or all included programs relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community health, irrigation, agriculture, conservation, flood control, transportation, or port facilities or for other tribal purposes.

''(3) CONSTRUCTION PROJECT.—The term 'construction project' means a tribal undertaking that constructs 1 or more roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community health, irrigation, agriculture, conservation, flood control, transportation, or port facilities or for other tribal purposes.

''(4) DEPARTMENT.—The term 'Department' means the Department of the Interior.

''(5) FUNDING AGREEMENT.—The term 'funding agreement' means a funding agreement under section 405(b).

''(6) GROSS MISMANAGEMENT.—The term 'gross mismanagement' means a significant violation, shown by clear and convincing evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds being made available for the included programs assumed by an Indian tribe.

''(7) INCLUDED PROGRAM.—The term 'included program' means a program that is eligible for inclusion under a funding agreement (including any portion of such a program and any function, service, or activity performed under such a program).

''(8) INDIAN TRIBE.—The term 'Indian tribe', in a case in which an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf in accordance with section 403(a)(3), includes

the other authorized Indian tribe, inter-tribal consortium, or tribal organization.

''(9) INHERENT FEDERAL FUNCTION.—The term 'inherent Federal function' means a Federal function that cannot legally be delegated to an Indian tribe.

''(10) INTER-TRIBAL CONSORTIUM.—

''(A) IN GENERAL.—The term 'inter-tribal consortium' means a coalition of 2 more separate Indian tribes that join together for the purpose of participating in self-governance.

''(B) INCLUSION.—The term 'inter-tribal organization' includes a tribal organization.

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

''(12) SELF-GOVERNANCE.—The term 'self-governance' means the program of self-governance established under section 402.

''(13) TRIBAL SHARE.—The term 'tribal share' means an Indian tribe's portion of all funds and resources that support secretarial included programs that are not required by the Secretary for the performance of inherent Federal functions.

''SEC. 402. ESTABLISHMENT.

''The Secretary shall carry out a program within the Department to be known as the 'Tribal Self-Governance Program'.

''SEC. 403. SELECTION OF PARTICIPATING INDIAN TRIBES.

''(a) IN GENERAL.—

''(1) CONTINUING PARTICIPATION.—An Indian tribe that was participating in the Tribal Self-Governance Demonstration Project at the Department under title III on October 25, 1994, may elect to participate in self-governance under this title.

''(2) ADDITIONAL PARTICIPANTS.—

''(A) IN GENERAL.—In addition to Indian tribes participating in self-governance under paragraph (1), an Indian tribe that meets the eligibility criteria specified in subsection (b) shall be entitled to participate in self-governance.

''(B) NO LIMITATION.—The Secretary shall not limit the number of additional Indian tribes to be selected each year from among Indian tribes that are eligible under subsection (b).

''(3) OTHER AUTHORIZED INDIAN TRIBE, INTER-TRIBAL CONSORTIUM, OR TRIBAL GOVERNMENT.—If an Indian tribe authorizes another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out an included program on its behalf under this title, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution).

''(4) JOINT PARTICIPATION.—Two or more Indian tribes that are not otherwise eligible under subsection (b) may be treated as a single Indian tribe for the purpose of participating in self-governance as a consortium if—

''(A) if each Indian tribe so requests; and

''(B) the consortium itself is eligible under subsection (b).

''(5) TRIBAL WITHDRAWAL FROM A CONSORTIUM.—

''(A) IN GENERAL.—An Indian tribe that withdraws from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance if the Indian tribe is eligible under subsection (b).

''(B) EFFECT OF WITHDRAWAL.—If an Indian tribe withdraws from participation in an inter-tribal consortium or tribal organization, the Indian tribe shall be entitled to its tribal share of funds and resources supporting the included programs that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

''(C) PARTICIPATION IN SELF-GOVERNANCE.—The withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization shall not affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance on behalf of 1 or more other Indian tribes.

''(D) WITHDRAWAL PROCESS.—

''(i) IN GENERAL.—An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its tribal share of any included program that is included in a compact or funding agreement.

''(ii) EFFECTIVE DATE.—

''(I) IN GENERAL.—A withdrawal under clause (i) shall become effective on the date specified in the resolution that authorizes transfer to the participating tribal organization or inter-tribal consortium.

''(II) NO SPECIFIED DATE.—In the absence of a date specified in the resolution, the withdrawal shall become effective on—

''(aa) the earlier of—

''(AA) 1 year after the date of submission of the request; or

''(BB) the date on which the funding agreement expires; or

''(bb) such date as may be agreed on by the Secretary, the withdrawing Indian tribe, and the tribal organization or inter-tribal consortium that signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

''(E) DISTRIBUTION OF FUNDS.—If an Indian tribe or tribal organization eligible to enter into a self-determination contract under title I or a compact or funding agreement under this title fully or partially withdraws from a participating inter-tribal consortium or tribal organization, the withdrawing Indian tribe—

''(i) may elect to enter into a self-determination contract or compact, in which case—

''(I) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds and resources supporting the included programs that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated to the funding agreement of the inter-tribal consortium or tribal organization); and

''(II) the funds referred to in subclause (I) shall be withdrawn by the Secretary from the funding agreement of the inter-tribal consortium or tribal organization and transferred to the withdrawing Indian tribe, on the condition that sections 102 and 105(i), as appropriate, shall apply to the withdrawing Indian tribe; or

''(ii) may elect not to enter into a self-determination contract or compact, in which case all funds not obligated by the inter-tribal consortium associated with the withdrawing Indian tribe's returned included programs, less closeout costs, shall be returned by the inter-tribal consortium to the Secretary for operation of the included programs included in the withdrawal.

''(F) RETURN TO MATURE CONTRACT STATUS.—If an Indian tribe elects to operate all or some included programs carried out under a compact or funding agreement under this title through a self-determination contract under title I, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

''(b) ELIGIBILITY.—To be eligible to participate in self-governance, an Indian tribe shall—

''(1) complete the planning phase described in subsection (c);

''(2) request participation in self-governance by resolution or other official action by the tribal governing body; and

''(3) demonstrate, for the 3 fiscal years preceding the date on which the Indian tribe requests participation, financial stability and financial management capability as evidenced by the Indian tribe's having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

''(c) PLANNING PHASE.—

''(1) IN GENERAL.—An Indian tribe seeking to participate in self-governance shall complete a planning phase in accordance with this subsection.

''(2) ACTIVITIES.—The planning phase—

''(A) shall be conducted to the satisfaction of the Indian tribe; and

''(B) shall include—

''(i) legal and budgetary research; and

''(ii) internal tribal government planning and organizational preparation.

''(d) GRANTS.—

''(1) IN GENERAL.—Subject to the availability of appropriations, an Indian tribe that meets the requirements of paragraphs (2) and (3) of subsection (b) shall be eligible for grants—

''(A) to plan for participation in self-governance; and

''(B) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

''(2) RECEIPT OF GRANT NOT REQUIRED.—Receipt of a grant under paragraph (1) shall not be a requirement of participation in self-governance.

''SEC. 404. COMPACTS.

''(a) IN GENERAL.—The Secretary shall negotiate and enter into a written compact with as Indian tribe participating in self-governance in a manner that is consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

''(b) CONTENTS.—A compact under subsection (a) shall—

''(1) specify the general terms of the government-to-government relationship between the Indian tribe and the Secretary; and

''(2) include such terms as the parties intend shall control year after year.

''(c) AMENDMENT.—A compact under subsection (a) may be amended only by agreement of the parties.

''(d) EFFECTIVE DATE.—The effective date of a compact under subsection (a) shall be—

''(1) the date of the execution of the compact by the Indian tribe; or

''(2) another date agreed to by the parties.

''(e) DURATION.—A compact under subsection (a) shall remain in effect for so long as permitted by Federal law or until terminated by written agreement, retrocession, or reassumption.

''(f) EXISTING COMPACTS.—An Indian tribe participating in self-governance under this title, as in effect on the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2003, shall have the option at any time after that date—

''(1) to retain its negotiated compact (in whole or in part) to the extent that the provisions of the compact are not directly contrary to any express provision of this title; or

''(2) to negotiate a new compact in a manner consistent with this title.

''SEC. 405. FUNDING AGREEMENTS.

''(a) IN GENERAL.—The Secretary shall negotiate and enter into a written funding agreement with the governing body of an Indian tribe in a manner that is consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

''(b) INCLUDED PROGRAMS.—

''(1) BUREAU OF INDIAN AFFAIRS AND OFFICE OF SPECIAL TRUSTEE.—

''(A) IN GENERAL.—A funding agreement shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding for all programs carried out by the Bureau of Indian Affairs and the Office of Special Trustee, without regard to the agency or office within which the program is performed (including funding for agency, area, and central office functions in accordance with section 409(c)), that—

''(i) are provided for in the Act of April 16, 1934 (25 U.S.C. 452 et seq.);

''(ii) the Secretary administers for the benefit of Indians under the Act of November 2, 1921 (25 U.S.C. 13), or any subsequent Act;

''(iii) the Secretary administers for the benefit of Indians with appropriations made to agencies other than the Department of the Interior; or

''(iv) are provided for the benefit of Indians because of their status as Indians.

''(B) INCLUSIONS.—Programs described in subparagraph (A) shall include all programs with respect to which Indian tribes or Indians are primary or significant beneficiaries.

''(2) OTHER AGENCIES.—A funding agreement under subsection (a) shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding for all programs carried out by the Secretary outside the Bureau of Indian Affairs, without regard to the agency or office within which the program is performed, including funding for agency, area, and central office functions in accordance with subsection 409(c), to the extent that the included programs are within the scope of paragraph (1).

''(3) DISCRETIONARY PROGRAMS.—A funding agreement under subsection (a) may, in accordance with such additional terms as the parties consider to be appropriate, include programs administered by the Secretary, in addition to programs described in paragraphs (1) and (2), that are of special geographical, historical, or cultural significance to the Indian tribe.

''(4) COMPETITIVE BIDDING.—Nothing in this section—

''(A) supersedes any express statutory requirement for competitive bidding; or

''(B) prohibits the inclusion in a funding agreement of a program in which non-Indians have an incidental or legally identifiable interest.

''(5) EXCLUDED FUNDING.—A funding agreement shall not authorize an Indian tribe to plan, conduct, administer, or receive tribal share funding under any program that—

''(A) is provided under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

''(B) is provided for elementary and secondary schools under the formula developed under section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008); and

''(C) is provided for the Flathead Agency Irrigation Division or the Flathead Agency Power Division (except that nothing in this section affects the contract authority of the Flathead Agency Irrigation Division or the Flathead Agency Power Division under section 102).

''(6) SERVICES, FUNCTIONS, AND RESPONSIBILITIES.—A funding agreement shall specify—

''(A) the services to be provided under the funding agreement;

''(B) the functions to be performed under the funding agreement; and

''(C) the responsibilities of the Indian tribe and the Secretary under the funding agreement.

''(7) BASE BUDGET.—A funding agreement shall, at the option of the Indian tribe, provide for a stable base budget specifying the recurring funds (including funds available under section 106(a)) to be transferred to the Indian tribe, for such period as the Indian tribe specifies in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations.

''(8) NO WAIVER OF TRUST RESPONSIBILITY.—A funding agreement shall prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, court decisions, and other laws.

''(c) AMENDMENT.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe.

''(d) EFFECTIVE DATE.—A funding agreement shall become effective on the date specified in the funding agreement.

''(e) EXISTING AND SUBSEQUENT FUNDING AGREEMENTS.—

''(1) SUBSEQUENT FUNDING AGREEMENTS.—Absent notification from an Indian tribe that is withdrawing or retroceding the operation of 1 or more included programs identified in a funding agreement, or unless otherwise agreed to by the parties to the funding agreement—

''(A) a funding agreement shall remain in effect until a subsequent funding agreement is executed; and

''(B) the term of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

''(2) EXISTING FUNDING AGREEMENTS.—An Indian tribe that was participating in self-governance under this title on the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2003 shall have the option at any time after that date—

''(A) to retain its existing funding agreement (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

''(B) to negotiate a new funding agreement in a manner consistent with this title.

''(3) MULTIYEAR FUNDING AGREEMENTS.—An Indian tribe may, at the discretion of the Indian tribe, negotiate with the Secretary for a funding agreement with a term that exceeds 1 year.

''SEC. 406. GENERAL PROVISIONS.

''(a) APPLICABILITY.—An Indian tribe may include in any compact or funding agreement provisions that reflect the requirements of this title.

''(b) CONFLICTS OF INTEREST.—An Indian tribe participating in self-governance shall ensure that internal measures are in place to address, pursuant to tribal law and procedures, conflicts of interest in the administration of included programs.

''(c) AUDITS.—

''(1) SINGLE AGENCY AUDIT ACT.—Chapter 75 of title 31, United States Code, shall apply to a funding agreement under this title.

''(2) COST PRINCIPLES.—An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

''(A) section 106 of this Act or any other provision of law; or

''(B) any exemptions to applicable Office of Management and Budget circulars granted by the Office of Management and Budget.

''(3) FEDERAL CLAIMS.—Any claim by the Federal Government against an Indian tribe relating to funds received under a funding agreement based on an audit under this subsection shall be subject to section 106(f).

''(d) REDESIGN AND CONSOLIDATION.—An Indian tribe may redesign or consolidate included programs or reallocate funds for included programs in any manner that the Indian tribe determines to be in the best interest of the Indian community being served, so long as the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law.

''(e) RETROCESSION.—

''(1) IN GENERAL.—An Indian tribe may fully or partially retrocede to the Secretary any included program under a compact or funding agreement.

''(2) EFFECTIVE DATE.—

''(A) AGREEMENT.—Unless the Indian tribe rescinds a request for retrocession, the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

''(B) NO AGREEMENT.—In the absence of such a specification, the retrocession shall become effective on—

''(i) the earlier of—

''(I) the date that is 1 year after the date of submission of the request; or

''(II) the date on which the funding agreement expires; or

''(ii) such date as may be agreed on by the Secretary and the Indian tribe.

''(f) NONDUPLICATION.—A funding agreement shall provide that, for the period for which, and to the extent to which, funding is provided to an Indian tribe under this title, the Indian tribe—

''(1) shall not be entitled to enter into a contract with the Secretary for funds under section 102, except that the Indian tribe shall be eligible for new included programs on the same basis as other Indian tribes; and

''(2) shall be responsible for the administration of included programs in accordance with the compact or funding agreement.

''(g) RECORDS.—

''(1) IN GENERAL.—Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of an Indian tribe shall not be treated as agency records for purposes of chapter 5 of title 5, United States Code.

''(2) RECORDKEEPING SYSTEM.—An Indian tribe shall—

''(A) maintain a recordkeeping system; and

''(B) on 30 days' notice, provide the Secretary with reasonable access to the records to enable the Department to meet the requirements of sections 3101 through 3106 of title 44, United States Code.

''SEC. 407. PROVISIONS RELATING TO THE SECRETARY.

''(a) TRUST EVALUATIONS.—A funding agreement shall include a provision to monitor the performance of trust functions by the Indian tribe through the annual trust evaluation.

''(b) REASSUMPTION.—

''(1) IN GENERAL.—A compact or funding agreement shall include provisions for the Secretary to reassume an included program and associated funding if there is a specific finding relating to that included program of—

''(A) imminent jeopardy to a physical trust asset, natural resource, or public health and safety that—

''(i) is caused by an act or omission of the Indian tribe; and

''(ii) arises out of a failure to carry out the compact or funding agreement; or

''(B) gross mismanagement with respect to funds transferred to an Indian tribe by a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

''(2) PROHIBITION.—The Secretary shall not reassume operation of an included program unless—

''(A) the Secretary first provides written notice and a hearing on the record to the Indian tribe; and

''(B) the Indian tribe does not take corrective action to remedy gross mismanagement or the imminent jeopardy to a physical trust asset, natural resource, or public health and safety.

''(3) EXCEPTION.—

''(A) IN GENERAL.— Notwithstanding subparagraph (2), the Secretary may, on written notice to the Indian tribe, immediately reassume operation of an included program if—

''(i) the Secretary makes a finding of both imminent and substantial jeopardy and irreparable harm to a physical trust asset, a natural resource, or the public health and safety caused by an act or omission of the Indian tribe; and

''(ii) the imminent and substantial jeopardy and irreparable harm to the physical trust asset, natural resource, or public health and safety arises out of a failure by the Indian tribe to carry out its compact or funding agreement.

''(B) REASSUMPTION.—If the Secretary reassumes operation of an included program under subparagraph (A), the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after the date of reassumption.

''(c) INABILITY TO AGREE ON COMPACT OR FUNDING AGREEMENT.—

''(1) FINAL OFFER.—If the Secretary and a participating Indian tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary.

''(2) DETERMINATION.—Not more than 45 days after the date of submission of a final offer, or as otherwise agreed to by the Indian tribe, the Secretary shall review and make a determination with respect to the final offer.

''(3) NO TIMELY DETERMINATION.—If the Secretary fails to make a determination with respect to a final offer within the time specified in paragraph (2), the Secretary shall be deemed to have agreed to the offer.

''(4) REJECTION OF FINAL OFFER.—

''(A) IN GENERAL.—If the Secretary rejects a final offer (or 1 or more provisions or funding levels in a final offer), the Secretary shall—

''(i) provide timely written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

''(I) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this title;

''(II) the included program that is the subject of the final offer is an inherent Federal function;

''(III) the Indian tribe cannot carry out the included program in a manner that would not result in significant danger or risk to the public health; or

''(IV) the Indian tribe is not eligible to participate in self-governance under section 403(b);

''(ii) provide technical assistance to overcome the objections stated in the notification required by clause (i);

''(iii) provide the Indian tribe a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised (except that the Indian tribe may, in lieu of filing an appeal, directly proceed to bring a civil action in United States district court under section 110(a)); and

''(iv) provide the Indian tribe the option of entering into the severable portions of a final proposed compact or funding agreement (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

''(B) EFFECT OF EXERCISING CERTAIN OPTION.—If an Indian tribe exercises the option specified in subparagraph (A)(iv)—

''(i) the Indian tribe shall retain the right to appeal the rejection by the Secretary under this section; and

''(ii) clauses (i), (ii), and (iii) of that subparagraph shall apply only to the portion of the proposed final compact or funding agreement that was rejected by the Secretary.

''(d) BURDEN OF PROOF.—In any administrative hearing or appeal or civil action brought under this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting a final offer made under subsection (c) or the grounds for a reassumption under subsection (b).

''(e) GOOD FAITH.—

''(1) IN GENERAL.—In the negotiation of compacts and funding agreements, the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy.

''(2) POLICY.—The Secretary shall carry out this Act in a manner that maximizes the policy of tribal self-governance.

''(f) SAVINGS.—To the extent that included programs carried out by Indian tribes under this title reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under section 409(c), the Secretary shall make such savings available to the Indian tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and included programs.

''(g) TRUST RESPONSIBILITY.—The Secretary may not waive, modify, or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

''(h) DECISIONMAKER.—A decision that constitutes final agency action and relates to an appeal within the Department brought under subsection (c)(4) may be made—

''(1) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

''(2) by an administrative law judge.

''(i) RULE OF CONSTRUCTION.—Each provision of this title and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance, and any ambiguity shall be resolved in favor of the Indian tribe.

''SEC. 408. CONSTRUCTION PROGRAMS AND CONSTRUCTION PROJECTS.

''(a) IN GENERAL.—An Indian tribe participating in self-governance may carry out a construction program or construction project under this title in the same manner as the Indian tribe carries out other included programs under this title, consistent with the provisions of all applicable Federal laws.

''(b) FEDERAL FUNCTIONS.—An Indian tribe participating in self-governance may, in carrying out construction projects under this title, elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law that would apply if the Secretary were to carry out a construction project, by adopting a resolution—

''(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under those laws; and

''(2) accepting the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the responsible Federal official under applicable environmental law.

''(c) NEGOTIATIONS.—

''(1) IN GENERAL.—In accordance with all applicable Federal laws, a construction program or construction project shall be treated in the same manner and be subject to all provisions of this Act as are all other tribal assumptions of included programs under this Act.

''(2) CONSTRUCTION PROJECTS.—A provision shall be included in the funding agreement that, for each construction project—

''(A) states the approximate start and completion dates of the construction project, which may extend for 1 or more years;

''(B) provides a general description of the construction project;

''(C) states the responsibilities of the Indian tribe and the Secretary with respect to the construction project;

''(D) describes—

''(i) the ways in which the Indian tribe will address project-related environmental considerations; and

''(ii) the standards by which the Indian tribe will accomplish the construction project; and

''(E) the amount of funds provided for the construction project.

''(d) CODES AND STANDARDS; TRIBAL ASSURANCES.—A funding agreement shall contain a certification by the Indian tribe that the Indian tribe will establish and enforce procedures designed to ensure that all construction-related included programs carried out through the funding agreement adhere to building codes and other codes and architectural and engineering standards (including public health and safety standards) identified by the Indian tribe in the funding agreement, which codes and standards shall be in conformity with nationally recognized standards for comparable projects in comparable locations.

''(e) RESPONSIBILITY FOR COMPLETION.—The Indian tribe shall assume responsibility for the successful completion of a construction project in accordance with the funding agreement.

''(f) FUNDING.—

''(1) IN GENERAL.—At the option of an Indian tribe, full funding for a construction program or construction project carried out under this title shall be included in a funding agreement as an annual advance payment.

''(2) ENTITLEMENT.—Notwithstanding the annual advance payment provisions or any other provision of law, an Indian tribe shall be entitled to receive in its initial funding agreement all funds made available to the Secretary for multiyear construction programs and projects carried out under this title.

''(3) CONTINGENCY FUNDS.—The Secretary shall include associated project contingency funds in an advance payment described in paragraph (1), and the Indian tribe shall be responsible for the management of the contingency funds included in the funding agreement.

''(4) REALLOCATION OF SAVINGS.—

''(A) IN GENERAL.—Notwithstanding any other provision of an annual Act of appropriation or other Federal law, an Indian tribe may reallocate any financial savings realized by the Indian tribe arising from efficiencies in the design, construction, or any

other aspect of a construction program or construction project.

''(B) PURPOSES.—A reallocation under subparagraph (A) shall be for construction-related activity purposes generally similar to those for which the funds were appropriated and distributed to the Indian tribe under the funding agreement.

''(g) APPROVAL.—

''(1) IN GENERAL.—If the planning and design documents for a construction project are prepared by an Indian tribe in a manner that is consistent with the certification given by the Indian tribe as required under subsection (d), approval by the Secretary of a funding agreement providing for the assumption of the construction project shall be deemed to be an approval by the Secretary of the construction project planning and design documents.

''(2) REPORTS.—The Indian tribe shall provide the Secretary with construction project progress and financial reports not less than semiannually.

''(3) INSPECTIONS.—The Secretary may conduct onsite project inspections at a construction project semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

''(h) WAGES.—

''(1) IN GENERAL.—All laborers and mechanics employed by a contractor or subcontractor in the construction, alteration, or repair (including painting and decorating) of a building or other facility in connection with a construction project funded by the United States under this title shall be paid wages at not less than the amounts of wages prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

''(2) AUTHORITY.—With respect to construction, alteration, or repair work to which that subchapter is applicable under this subsection, the Secretary of Labor shall have the authority and functions specified in the Reorganization Plan numbered 14, of 1950.

''(3) APPLICABILITY OF SUBSECTION.—Notwithstanding any other provision of law, this subsection does not apply to any portion of a construction project carried out under this Act—

''(A) that is funded from a non-Federal source, regardless of whether the non-Federal funds are included with Federal funds for administrative convenience; or

''(B) that is performed by a laborer or mechanic employed directly by an Indian tribe or tribal organization.

''(4) APPLICABILITY OF TRIBAL LAW.—This subsection does not apply to a compact or funding agreement if the compact, self-determination contract, or funding agreement is otherwise covered by a law (including a regulation) adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

''(i) APPLICABILITY OF OTHER LAW.—Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), the Federal Acquisition Regulation, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project conducted under this title.

''SEC. 409. PAYMENT.

''(a) IN GENERAL.—At the request of the governing body of the Indian tribe and under the terms of a funding agreement, the Secretary shall provide funding to the Indian tribe to carry out the funding agreement.

''(b) ADVANCE ANNUAL PAYMENT.—At the option of the Indian tribe, a funding agreement shall provide for an advance annual payment to an Indian tribe.

''(c) AMOUNT.—Subject to subsection (e) and sections 405 and 406 of this title, the Secretary shall provide funds to the Indian tribe under a funding agreement for included programs in the amount that is equal to the amount that the Indian tribe would have been entitled to receive under contracts and grants under this Act (including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members) without regard to the organization level within the Federal agency in which the included programs are carried out.

''(d) TIMING.—Unless the funding agreement provides otherwise, the transfer of funds shall be made not later than 10 days after the apportionment of funds by the Office of Management and Budget to the Department.

''(e) AVAILABILITY.—Funds for trust services to individual Indians shall be available under a funding agreement only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the Indian tribe.

''(f) MULTIYEAR FUNDING.—A funding agreement may provide for multiyear funding.

''(g) LIMITATION ON AUTHORITY OF THE SECRETARY.—The Secretary shall not—

''(1) fail to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this Act, except as required by Federal law;

''(2) withhold any portion of such funds for transfer over a period of years; or

''(3) reduce the amount of funds required under this Act—

''(A) to make funding available for self-governance monitoring or administration by the Secretary;

''(B) in subsequent years, except as necessary as a result of—

''(i) a reduction in appropriations from the previous fiscal year for the program to be included in a compact or funding agreement;

''(ii) a congressional directive in legislation or an accompanying report;

''(iii) a tribal authorization;

''(iv) a change in the amount of pass-through funds subject to the terms of the funding agreement; or

''(v) completion of an activity under an included program for which the funds were provided;

''(C) to pay for Federal functions, including—

''(i) Federal pay costs;

''(ii) Federal employee retirement benefits;

''(iii) automated data processing;

''(iv) technical assistance; and

''(v) monitoring of activities under this Act; or

''(D) to pay for costs of Federal personnel displaced by self-determination contracts under this Act or self-governance.

''(h) FEDERAL RESOURCES.—If an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles), or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Indian tribe.

''(i) PROMPT PAYMENT ACT.—Chapter 39 of title 31, United States Code, shall apply to the transfer of funds due under a compact or funding agreement authorized under this Act.

''(j) INTEREST OR OTHER INCOME.—

''(1) IN GENERAL.—An Indian tribe may retain interest or income earned on any funds paid under a compact or funding agreement to carry out governmental purposes.

''(2) NO EFFECT ON OTHER AMOUNTS.—The retention of interest or income under paragraph (1) shall not diminish the amount of funds that an Indian tribe is entitled to receive under a funding agreement in the year in which the interest or income is earned or in any subsequent fiscal year.

''(3) INVESTMENT STANDARD.—Funds transferred under this title shall be managed using the prudent investment standard.

''(k) CARRYOVER OF FUNDS.—

''(1) IN GENERAL.—Notwithstanding any provision of an Act of appropriation, all funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended.

''(2) EFFECT OF CARRYOVER.—If an Indian tribe elects to carry over funding from 1 year to the next, the carryover shall not diminish the amount of funds that the Indian tribe is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

''(l) LIMITATION OF COSTS.—

''(1) IN GENERAL.—An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement.

''(2) NOTICE OF INSUFFICIENCY.—If at any time an Indian tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the Indian tribe shall provide reasonable notice of the insufficiency to the Secretary.

''(3) SUSPENSION OF PERFORMANCE.—If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

''SEC. 410. CIVIL ACTIONS.

''(a) INCLUSION AS CONTRACT.—Except as provided in subsection (b), for the purposes of section 110, the term 'contract' shall include a funding agreement.

''(b) CONTRACTS WITH PROFESSIONALS.—For the period during which a funding agreement is in effect, section 2103 of the Revised Statutes (25 U.S.C. 81), and section 16 of the Act of June 18, 1934 (25 U.S.C. 476) shall not apply to a contract between an attorney or other professional and an Indian tribe.

''SEC. 411. FACILITATION.

''(a) IN GENERAL.—Except as otherwise provided by law, the Secretary shall interpret each Federal law (including a regulation) in a manner that facilitates—

''(1) the inclusion of included programs in funding agreements; and

''(2) the implementation of funding agreements.

''(b) REGULATION WAIVER.—

''(1) REQUEST.—An Indian tribe may submit a written request for a waiver to the Secretary identifying the specific text in regulation sought to be waived and the basis for the request.

''(2) DETERMINATION BY THE SECRETARY.—Not later than 60 days after the date of receipt by the Secretary of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing to the Indian tribe.

''(3) GROUND FOR DENIAL.—The Secretary may deny a request for a waiver only on a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

''(4) FAILURE TO MAKE DETERMINATION.—If the Secretary fails to approve or deny a waiver request within the time required under paragraph (2), the Secretary shall be deemed to have approved the request.

''(5) FINALITY.—The Secretary's decision shall be final for the Department.

''SEC. 412. DISCLAIMERS.

''Nothing in this title expands or alters any statutory authority of the Secretary so as to authorize the Secretary to enter into any funding agreement under section 405(b)(2) or 415(c)(1)—

''(1) with respect to an inherent Federal function;

''(2) in a case in which the statute establishing a program does not authorize the type of participation sought by the Indian tribe (without regard to whether 1 or more Indian tribes are identified in the authorizing statute); or

''(3) limits or reduces in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

''SEC. 413. APPLICABILITY OF OTHER PROVISIONS.

''(a) MANDATORY APPLICATION.—Sections 5(d), 6, 102(c), 104, 105(f), 110, and 111 apply to compacts and funding agreements under this title.

''(b) DISCRETIONARY APPLICATION.—

''(1) IN GENERAL.—At the option of a participating Indian tribe, any or all of the provisions of title I or title V shall be incorporated in a compact or funding agreement.

''(2) EFFECT.—Each incorporated provision—

''(A) shall have the same effect as if the provision were set out in full in this title; and

''(B) shall be deemed to supplement or replace any related provision in this title and to apply to any agency otherwise governed by this title.

''(3) EFFECTIVE DATE.—If an Indian tribe requests incorporation at the negotiation stage of a compact or funding agreement, the incorporation—

''(A) shall be effective immediately; and

''(B) shall control the negotiation and resulting compact and funding agreement.

''SEC. 414. BUDGET REQUEST.

''(a) REQUIREMENT OF ANNUAL BUDGET REQUEST.—

''(1) IN GENERAL.—The President shall identify in the annual budget request submitted to Congress under section 1105 of title 31, United States Code, all funds necessary to fully fund all funding agreements authorized under this title.

''(2) DUTY OF SECRETARY.— The Secretary shall ensure that there are included, in each budget request, requests for funds in amounts that are sufficient for planning and negotiation grants and sufficient to cover any shortfall in funding identified under subsection (b).

''(3) TIMING.—All funds included within funding agreements shall be provided to the Office of Self-Governance not later than 15 days after the date on which funds are apportioned to the Department.

''(4) DISTRIBUTION OF FUNDS.—The Office of Self-Governance shall be responsible for distribution of all funds provided under this title.

''(5) RULE OF CONSTRUCTION.—Nothing in this subsection authorizes the Secretary to reduce the amount of funds that an Indian tribe is otherwise entitled to receive under a funding agreement or other applicable law.

''(b) PRESENT FUNDING; SHORTFALLS.—In all budget requests, the President shall identify the level of need presently funded and any shortfall in funding (including direct program costs, tribal shares and contract support costs) for each Indian tribe, either directly by the Secretary of Interior, under self-determination contracts, or under compacts and funding agreements.

''SEC. 415. REPORTS.

''(a) IN GENERAL.—

''(1) REQUIREMENT.—On January 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this title.

''(2) ANALYSIS.—A report under paragraph (1) shall include a detailed analysis of tribal unmet need for each Indian tribe, either directly by the Secretary, under self-determination contracts under title I, or under compacts and funding agreements authorized under this subchapter.

''(3) NO ADDITIONAL REPORTING REQUIREMENTS.—In preparing reports under paragraph (1), the Secretary may not impose any reporting requirement on participating Indian tribes not otherwise provided for by this Act.

''(b) CONTENTS.—A report under subsection (a) shall—

''(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds;

''(2) identify—

''(A) the relative costs and benefits of self-governance;

''(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian tribes and members of Indian tribes;

''(C) the funds transferred to each Indian tribe and the corresponding reduction in the Federal bureaucracy;

''(D) the funding formula for individual tribal shares of all Central Office funds, with the comments of affected Indian tribes, developed under subsection (d); and

''(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of inherent Federal functions by type and location;

''(3) contain a description of the methods used to determine the individual tribal share of funds controlled by all components of the Department (including funds assessed by any other Federal agency) for inclusion in compacts or funding agreements;

''(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of not less than 30 days); and

''(5) include the separate views and comments of each Indian tribe or tribal organization.

''(c) REPORT ON NON-BIA PROGRAMS.—

''(1) IN GENERAL.—In order to optimize opportunities for including non-Bureau of Indian Affairs included programs in agreements with Indian tribes participating in self-governance under this title, the Secretary shall—

''(A) review all included programs administered by the Department, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned;

''(B) not later than January 1, 2004, submit to Congress—

''(i) a list of all such included programs that the Secretary determines, with the concurrence of Indian tribes participating in self-governance, are eligible to be included in a funding agreement at the request of a participating Indian tribe; and

''(ii) a list of all such included programs for which Indian tribes have requested to include in a funding agreement under section 405(b)(3) due to the special geographic, historical, or cultural significance to the Indian tribe, indicating whether each request was granted or denied and stating the grounds for any denial.

''(2) PROGRAMMATIC TARGETS.—The Secretary shall establish programmatic targets, after consultation with Indian tribes participating in self-governance, to encourage bureaus of the Department to ensure that a significant portion of those included programs are included in funding agreements.

''(3) PUBLICATION.—The lists and targets under paragraphs (1) and (2) shall be published in the Federal Register and be made available to any Indian tribe participating in self-governance.

''(4) ANNUAL REVIEW.—

''(A) IN GENERAL.—The Secretary shall annually review and publish in the Federal Register, after consultation with Indian tribes participating in self-governance, revised lists and programmatic targets.

''(B) CONTENTS.—The revised lists and programmatic targets shall include all included programs that were eligible for contracting in the original list published in the Federal Register in 1995, except for included programs specifically determined not to be contractible as a matter of law.

''(d) REPORT ON CENTRAL OFFICE FUNDS.—Not later than January 1, 2004, the Secretary shall, in consultation with Indian tribes, develop a funding formula to determine the individual tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs for inclusion in the self-governance compacts.

''SEC. 416. REGULATIONS.

''(a) IN GENERAL.—

''(1) PROMULGATION.—Not later than 90 days after the date of the enactment of the Department of the Interior Tribal Self-Governance Act of 2003, the Secretary shall initiate procedures under subchapter III of chapter 5, of title 5, United States Code, to negotiate and promulgate such regulations as are necessary to carry out the amendments made by that Act.

''(2) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement the amendments shall be published in the Federal Register not later than 1 year after the date of enactment of that Act.

''(3) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under paragraph (1) shall expire on the date that is 18 months after the date of enactment of that Act.

''(b) COMMITTEE.—

''(1) MEMEBERSHIP.—A negotiated rulemaking committee established under section 565 of title 5, United States Code, to carry out this section shall have as its members only Federal and tribal government representatives.

''(2) LEAD AGENCY.— Among the Federal representatives, the Office of Self-Governance shall be the lead agency for the Department of the Interior.

''(c) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

''(d) EFFECT.—

''(1) REPEAL.—All regulatory provisions under part 1000 of title 25, Code of Federal Regulations, are repealed on the date of enactment of the Department of the Interior Tribal Self-Governance Act of 2003.

''(2) EFFECTIVENESS WITHOUT REGARD TO REGULATIONS.—The lack of promulgated regulations shall not limit the effect of this Act.

''(3) INTERIM PROVISION.—Notwithstanding this subsection, any regulation under part 1000 of title 25, Code of Federal Regulations,

shall remain in effect, at an Indian tribe's option, in implementing compacts until regulations are promulgated.

"SEC. 417. EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCES, AND RULES.

''Unless expressly agreed to by a participating Indian tribe in a compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

''(1) the eligibility provisions of section 105(g); and

''(2) regulations promulgated under section 416.

"SEC. 418. APPEALS.

''In any administrative appeal or civil action for judicial review of any decision made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

''(1) the validity of the grounds for the decision; and

''(2) the consistency of the decision with the provisions and policies of this title.

"SEC. 419. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as are necessary to carry out this title.''.

S. 1716

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

SECTION 1. PHASE II STORM WATER PROGRAM IMPLEMENTATION AND MANAGEMENT.

Section 319(h) of the Federal Water Pollution Control Act (33 U.S.C. 1329(h)) is amended by adding at the end the following:

''(13) PHASE II STORM WATER IMPLEMENTATION.—A State may use funds from a grant provided under this subsection—

''(A) to carry out a project or activity relating to the development or implementation of phase II of the storm water program of the Environmental Protection Agency established by the final rule entitled 'National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges'', promulgated by the Administrator on December 8, 1999 (64 Fed. Reg. 68722); and

''(B) to implement a management program in a geographic jurisdiction for phase II of the program described in subparagraph (A).''.

By Mr. CHAFEE (for himself, Mr. BOND, and Mr. JEFFORDS):

S. 1716. A bill to amend the Federal Water Pollution Control Act to authorize the use of funds made available for nonpoint source management programs for projects and activities relating to the development and implementation of phase II of the storm water program of the Environmental Protection Agency; to the Committee on Environment and Public Works.

Mr. CHAFEE. Mr. President, I am pleased to be joined by my colleagues Senator BOND of Missouri and Senator JEFFORDS of Vermont in introducing legislation today that addresses an issue of great concern for our States and regions—the availability of Clean Water Act Section 319 funding for development and implementation of the Phase II Storm Water Program.

Stormwater runoff carries with it a host of contaminants as it runs over rooftops and lawns, parking lots and new construction sites, depositing nutrients, toxic metals, and sediments into downstream waterbodies. In many areas of the country, and particularly strongly urbanized areas, stormwater ranks high on the list of priority pollution sources impacting the water quality of our lakes, rivers, streams, and bays. As States proceed with development of the federally-mandated Phase II Storm Water Program to address critical stormwater runoff, the costs of implementing the requirements of the program are becoming a major concern for States and the municipalities.

At issue is whether funds provided to States through Section 319 of the Clean Water Act may be used for the purposes of developing and implementing the Environmental Protection Agency (EPA) Phase II Storm Water Rule that went into effect in March 2003. This issue is significant because the Phase II Program requires States to regulate stormwater discharges, which have historically been treated as nonpoint sources, as if they are point sources under the National Pollutant Discharge Elimination System (NPDES) Program. As a result, it is possible that federally-mandated State nonpoint source control programs, which have been funded by 319 monies in the past, may have to find new funding sources even as stormwater requirements are increased.

In recent years, the Environmental Protection Agency's Nonpoint Source Program has increasingly focused on impaired waters and stormwater-related concerns as the agency has moved toward a watershed-based approach. Although the Clean Water Act appears silent on the eligibility of Section 319 funding to address stormwater issues currently falling under the NPDES Program, EPA has thus far interpreted the Act to prohibit 319 funds from being used for implementation of the Phase II Storm Water Program. In recent months, a lack of clarity also exists on the use of Section 319 funding in geographic areas covered by the Phase II Program. Phase II applies to all populated areas of 1000 people or greater per square mile. In Rhode Island, nearly all of the state's impaired waters are included in Phase II areas. Given a strict EPA interpretation of the law, Section 319 funds could not be used in any of these areas.

Last year, the Senate approved and the President signed into law the Great Lakes and Lake Champlain Act of 2002 which contains a provision providing a one-year extension, during fiscal year 2003, for states to retain flexibility in using 319 funding for addressing their stormwater concerns. We are introducing legislation today that builds upon the fiscal year 2003 fix by providing permanent authority for states to use Section 319 monies for development and implementation of the Phase II Storm Water Program. Further, the legislation clarifies that 319 monies may be used in Phase II geographic jurisdictions.

The Phase II Storm Water Program is an important step toward protecting our Nation's waters from stormwater discharges, and striving for an integrated strategy in preventing, controlling, and reducing pollution entering our waterbodies. The legislation introduced today provides critical flexibility to States and municipalities as they continue to struggle financially with coming into compliance with the Phase II Program. I encourage my colleagues on the Environment and Public Works Committee, and in the Senate, to join us in expeditiously approving this important legislation. Thank you.

Mr. JEFFORDS. Mr. President, I rise before the Senate today to join my colleagues Senator CHAFEE and Senator BOND to introduce legislation to provide funding for storm water control and management. This legislation will ensure that smaller communities required to comply with the storm water phase II regulations will continue to have access to section 319 grant funds under the Clean Water Act.

The storm water phase II regulations went into effect on March 10, 2003. These regulations require that smaller communities required to obtain a National Pollutant Discharge Elimination System (NPDES) permit and implement best management practices to control storm water discharges and prevent water pollution. Existing EPA policy requires that once a community obtains an NPDES permit, it can no longer use section 319, non-point source funding. However, there are no dedicated, alternative funding sources available for storm water management. As smaller communities, like many of those in Vermont, are working hard to implement strong programs to control storm water runoff, it seems counter-intuitive to remove one of the main funding sources these communities use for this purpose.

During the 107th Congress, as Chairman of the Environment and Public Works Committee, I supported Senator CHAFEE's efforts to put in place a one-year fix to this problem, allowing section 319 funds to be used for storm water controls during fiscal year 2003. This one-year fix passed the EPW Committee, the full Senate, and the full House unanimously. I hope that we have the same level of support during the 108th Congress.

In our efforts to make our nation's water cleaner, non-point sources of pollution remain our next major hurdle. Storm water runoff is one area where we can make an immediate difference in the amount of pollution reaching our waters with an investment in best management practices and control techniques. We need to make more resources available to communities working hard to reduce the impact of storm water runoff on water quality. This legislation is step one of a long list of actions that I believe this Congress should take to make more resources available for storm water management.

By Mr. HATCH (for himself, Mr. BROWNBACK, Mr. SPECTER, and Mr. DODD):

S. 1717. A bill to amend the Public Health Service Act to establish a National Cord Blood Stem Cell Bank Network to prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients and to support peer-reviewed research using such cells; to the Committee on Health, Education, Labor, and Pensions.

Mr. HATCH. Mr. President, today, I am pleased to introduce the ''Cord Blood Stem Cell Act'' of 2003. I am particularly gratified that Senators BROWNBACK, SPECTER, and DODD have joined me as cosponsors of this bipartisan bill. The purpose of the Cord Blood Stem Cell Act is to create a network of qualified cord blood banking centers to prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients and to support research using such cells.

As my colleagues are aware, thousands of Americans receive and are saved by bone marrow transplants each year. But, thousands more die for lack of an appropriate donor. The good news is that for several years, experts from a few centers have collected and preserved the blood and stem cells from human placenta and umbilical cords. These cells can provide an alternative to bone marrow transplantation. For some patients, particularly those for whom a bone marrow match cannot be found, transplantation of these cells can be a life-saving therapy.

In some cases cord blood stem cell transplants provide an advantage relative to bone marrow transplants because they reduce risk to the donor, they are readily available, and they lower the risk of transplant complications. Cord blood stem cells also increase the success of transplantation from donors to recipients who are not fully matched, thus decreasing the difficulty of finding a fully matched donor.

Cord blood transplantation has been used successfully to treat leukemia, lymphoma, immunodeficiency diseases, sickle cell anemia, and several metabolic diseases. However, despite initial successes, not enough cord blood exists currently to meet the need. Currently, the number of cord blood stem cell units in the United States is insufficient to meet the need.

The bipartisan Cord Blood Stem Cell Act of 2003 proposes to establish an inventory of 150,000 cord blood stem cell units that reflects the diversity of the United States and will enable at least 90 percent of Americans to receive an appropriately matched cord blood stem cell transplant. The inventory would provide a critical resource for those in need of transplants and allocate a certain proportion of units to sustain further research on cord blood stem cells.

The National Cord Blood Stem Cell Network, administered by the Secretary of Health and Human services and a Board of Directors appointed by the Secretary, would be a system of qualified donor banks which will acquire, test, and preserve cord blood stem cells, educate and recruit donors, and make such cells available to transplant centers for stem cell transplantation. The Network would establish a National Cord Blood Stem Cell Registry, which would acquire and distribute donated units of cord blood, provide health care professionals with the ability to search the entire registry for a suitable donor match for patients and maintain a database to document the activities of the Network.

I ask unanimous consent that a brief section-by-section analysis of the National Cord Blood Stem Cell Act be printed in the RECORD.

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

CORD BLOOD STEM CELL ACT OF 2003

Section 1—Short Title: Cord Blood Stem Cell Act of 2003

Section 2—National Cord Blood Stem Cell Bank Network:

Subsection (a): Sets fourth the definitions to be used for the purposes of this document.

Subsection (b): (1) In general—A national cord blood stem cell bank containing of 150,000 units will be established and provided for by qualified cord blood stem cell banks. (2) Purpose of donor banks—The banks will acquire tissue type, test, cryopreserve, and store donated cord blood stem cell units and make cord blood units available. Ten percent of this cord blood inventory will be allocated for research. (3) Eligibility of donor banks—In order to create an effective donor bank it must obtain all licenses, certifications, and registrations needed to operate. It must preform adequate screenings of the cord blood in order to eliminate transmission of disease and other harmful infections. Donor banks must uphold the utmost confidentiality to protect the patients and the donors under HIPAA. A donor bank must encourage an ethnically diverse population of cord blood stem cells. A donor bank must also develop an adequate system of communication for nationwide usage of cord blood stem cells, and educate the public on the advantages of donating and utilizing cord blood stem cells.

Subsection (c): Administration of the Network—Cord blood stem cell banks shall be run by a board of directors, including a chairman. Each member of the board of directors shall serve a 3-year term, and the board will be represented by various experienced people. Each year ⅓ of the board of directors' terms will expire.

There shall also be a National Cord Blood Stem Cell registry. The registry shall find appropriate cord blood for matched candidates; allow searches in the registry for a suitable donor for patients; and maintain a healthy, updated database.

The Database shall be confidential under HIPAA, and will be carefully monitored by the Secretary.

Subsection (d): Authorization of Appropriation—Authorizes $15 million for FY2004.

This is a therapy that can be life-saving for many Americans with diseases that can be treated by stem cell transplantation; particularly for many minorities and other Americans who are unable to find a matching bone marrow donor. I am pleased to introduce this bill that will save lives by providing Americans with the opportunity to receive a promising therapy.

Mr. DODD. Mr. President, I am pleased to join Senator HATCH, Senator BROWNBACK, and Senator SPECTER in introducing legislation to advance the use of umbilical cord blood for clinical applications and research. I first became aware of the potential therapeutic benefits of cord blood when my daughter was born 2 years ago. At that time, our doctor informed me and my wife that preserving a small amount of blood from the umbilical cord could prove enormously beneficial later in her life. Should she become ill with a disease requiring bone marrow reconstitution, he told us, her own cord blood stem cells could be used. This would eliminate the need to find a suitable bone marrow donor.

The bill that we are introducing today will begin a new national commitment to the development of this technology—which has the potential to reduce pain and suffering and save the lives of so many Americans afflicted with some of the most debilitating illnesses. Cord blood has already been used successfully in treating a number of diseases, including sickle cell anemia and certain childhood cancers. However, the use of cord blood is still fledgling. Recent developments have suggested that the stem cells derived from cord blood may be useful in treating a much wider range of diseases, such as Parkinson's disease, diabetes, and heart disease.

Like many Americans, I had never heard of cord blood before the birth of my daughter. It is not widely used—at least in this country. In the first 8 months of this year, 95 percent of all bone marrow reconstitutions were done using a bone marrow transplant. Only 5 percent used cord blood. This figure is surprising when we consider the potential benefits of cord blood relative to bone marrow.

First, it can be very difficult to find a suitable bone marrow donor. According to a General Accounting Office, GAO, report, of the 15,231 individuals needing bone marrow transplants between 1997 and 2000 who conducted a preliminary search of the National Bone Marrow Donor Registry, NBMDR, only 4,056 received a transplant—a 27-percent success rate. This number is even lower for minorities. Cord blood would not only produce an additional source of donation, it also does not require as exact a match as bone marrow.

In addition, cord blood is readily available. While it can take months between finding a bone marrow match and actually receiving a transplant, a unit of cord blood can be utilized in a matter of days or weeks. Cord blood also lowers the risk of complications of both the donor and the recipient. The need to extract bone marrow from the donor is eliminated, and the risk of infection or rejection by the recipient is significantly reduced. Finally, research has suggested that cord blood might produce better outcomes than bone marrow in children.

Why then, given all of these benefits, has the use of cord blood not become

much more prevalent in the United States? In Japan, where the use of cord blood in clinical settings is more advanced, nearly half of all transplants now use cord blood rather than bone marrow.

The relatively infrequent use of cord blood in our country is at least partly attributable to the lack of a national infrastructure for the matching and distribution of cord blood units. There are a handful of cord blood banks around the country doing excellent work, but there is a much more developed infrastructure for bone marrow. This is thanks to legislation passed by Congress in 1986 that established a National Registry for bone marrow. By the way, that legislation is due to be reauthorized next year—and I would like to voice my strong support for that reauthorization.

Our bill would create a similar infrastructure for cord blood. Specifically, it would direct the Secretary of Health and Human Services, HHS, acting through the Administrator of the Health Resources and Services Administration, HRSA, to establish a National Cord Blood Stem Cell Bank Network, as well as a registry of available cord blood units. The network and registry would be required to collect a minimum of 150,000 units, which should be sufficient to provide a suitable match for 90 percent of the U.S. population.

Donor banks would also be required to educate the general public about the potential benefits of cord blood, and encourage an ethnically diverse population of cord blood donors. Given the untapped potential of cord blood, at least 10 percent of the available units must also be made available for research. Finally, the legislation authorizes an appropriation of $15 million for fiscal year 2004, and such sums as may be necessary for fiscal years 2005 through 2008.

Mr. President, before finishing today I would like to make it clear that I strongly support the continuation of the excellent work done by the National Marrow Donor Program (NMDP). Cord blood should act as a complement to—not a replacement for—bone marrow. In many cases, a bone marrow transplant is still the preferred therapy. Physicians should have the ability to decide on a case-by-case basis which is best for their patients. That is why I am hopeful that the NMDP will have a very active role in designing and supporting the National Cord Blood Stem Cell Network and Registry. Ideally, the two will work together to provide a single resource where doctors can search both cord blood stockpiles and a list of marrow donors for a suitable match for their patients.

I firmly believe that the creation of a national infrastructure for cord blood will, in time, save the lives of thousands of gravely ill Americans. We have a responsibility to encourage use of cord blood where appropriate today, and invest in research to fully tap the potential of this technology. I urge my colleagues to support this legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 239—DESIGNATING NOVEMBER 7, 2003, AS ''NATIONAL NATIVE AMERICAN VETERANS DAY'' TO HONOR THE SERVICE OF NATIVE AMERICANS IN THE UNITED STATES ARMED FORCES AND THE CONTRIBUTION OF NATIVE AMERICANS TO THE DEFENSE OF THE UNITED STATES

Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. BINGAMAN, Mr. JOHNSON, Mr. THOMAS, and Mr. MCCAIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 239

Whereas Native Americans have served with honor and distinction in the United States Armed Forces and defended the United States of America for more than 200 years;

Whereas Native Americans have served in wars involving the United States from Valley Forge to the 2003 hostilities in Afghanistan and Iraq;

Whereas Native Americans have served in the Armed Forces with the highest record of military service of any group in the United States;

Whereas the courage, determination, and fighting spirit of Native Americans have strengthened and continue to strengthen the United States, including the United States Armed Forces;

Whereas Native Americans have made the ultimate sacrifice in defense of the United States, even in times when Native Americans were not citizens of the United States;

Whereas the establishment of a National Native American Veterans Day will honor the continuing service and sacrifice of Native Americans in the United States Armed Forces; and

Whereas November 7th, a date that falls within the traditional observance of Native American Indian Heritage Month, would be an appropriate day to establish a National Native American Veterans Day: Now, therefore, be it

Resolved, That the Senate—

(1) honors the service of Native Americans in the United States Armed Forces and the contribution of Native Americans to the defense of the United States;

(2) designates November 7, 2003, as ''National Native American Veterans Day'';

(3) encourages all people in the United States to learn about the history of the service of Native Americans in the Armed Forces; and

(4) requests that the President issue a proclamation calling on the people of the United States to observe the day with appropriate programs, ceremonies, and activities to demonstrate support for Native American veterans.

Mr. CAMPBELL. Mr. President, I am pleased to be joined by Senators INOUYE, BINGAMAN, JOHNSON, and THOMAS in submitting a resolution to honor Native American Indian veterans for their service in the Armed Forces of the United States and to designate November 7, 2003 as ''National Native American Veterans Day''.

As the events of conflict in Iraq continue we all hope and pray for the safe return of the men and women who are overseas, far from home protecting our nation and others.

Native Americans have fought in wars and conflicts that date back to the days before the Revolution and fought alongside the colonists during the Revolutionary war.

Native people continued the call by enlisting in the armed services of the United States to fight in the many conflicts of our past including the War of 1812, the Civil War, and the Spanish-American war in 1898.

In 1868, the U.S. Army established the Indian scouts to utilize their special skill of scouting the enemy. Theodore Roosevelt recruited Native Americans to be part of his famous Rough Riders. This is probably a little known fact.

Within the last century, approximately 12,000 Native Americans served in World War I, 44,000 in World War II and the Korean War, 42,000 in the Vietnam war, and at the end of the 20th century there were nearly 190,000 Native American Indian men and women serving in the military.

At the same time, few people know that American Indians were not made citizens until Congress enacted the Indian Citizenship Act in 1924.

In 2001, I was honored to take part in ceremonies awarding the Congressional gold medal to the Navajo Code Talkers who made such a great contribution to the war efforts in the Pacific during World War II. At a time when the Japanese were breaking the codes developed by American intelligence, the Code Talkers made use of the Navajo language to confound the enemy and communicate military strategy and positions without compromise. Of all the codes developed in World War II, the Navajo language code was the only one not broken during World War II.

The Code Talkers story is not the only one worthy of recognition. Only recently was it rediscovered that an Oneida woman, Tyonajanegen, fought alongside her husband, an American army officer, during the American Revolution. Sacajawea, a Shoshone woman, guided and served as an interpreter for Lewis and Clark during their expedition. Native women also served in the Spanish American War and World War I as military nurses. Approximately 800 Native women served in World War II. They continued to answer the call throughout the military campaigns of the Korean War, the Vietnam War, Operations Desert Shield and, recently, Desert Storm.

We also honor the memory of Lori Piestewa, a Hopi woman, who fought valiantly and bravely to protect her fellows during the invasion of Iraq. Just as we cheered when Jessica Lynch was rescued and returned home, all Americans were saddened to learn of Lori Piestewa's fate.

Some warriors served this country valiantly, yet fell, not by a bullet, but