and older, to provide for a one-year open season under that plan, and for other purposes.

S. 460

At the request of Mrs. FEINSTEIN, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 460, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program.

S. 1109

At the request of Mr. TALENT, the names of the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Virginia (Mr. ALLEN) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1109, a bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes.

S. 1129

At the request of Mrs. FEINSTEIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1129, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 1157

At the request of Mr. BROWNBACK, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 1157, a bill to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.

S. 1398

At the request of Mr. DEWINE, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1398, a bill to provide for the environmental restoration of the Great Lakes.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1557

At the request of Mr. MCCONNELL, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1557, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1726

At the request of Mr. ALEXANDER, the names of the Senator from Missouri (Mr. BOND) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 1726, a bill to reduce the preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1741

At the request of Mrs. DOLE, her name was added as a cosponsor of S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 1755

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1755, a bill to amend the Richard B. Russell National School Lunch Act to provide grants to support farm-to-cafeteria projects.

S. 1774

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1774, a bill to repeal the sunset provisions in the Undetectable Firearms Act of 1988.

S. 1786

At the request of Mr. ALEXANDER, the names of the Senator from New Hampshire (Mr. GREGG), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Illinois (Mr. DURBIN), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mr. PRYOR), the Senator from Michigan (Ms. STABENOW), the Senator from Maine (Ms. COLLINS) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. 1786, a bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

S. 1839

At the request of Mr. SMITH, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1839, a bill to extend the Temporary Extended Unemployment Compensation Act of 2002.

S. 1858

At the request of Mr. COCHRAN, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1858, a bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations.

S. 1879

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1879, a bill to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards.

S. 1920

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1920, a bill to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

S. 1925

At the request of Mr. KENNEDY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 1926

At the request of Ms. STABENOW, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Minnesota (Mr. DAYTON) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 1926, a bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself, Mr. INHOFE, Mrs. DOLE, and Mr. ROCKEFELLER):

S. 1936. A bill to amend the Internal Revenue Code of 1986 to exclude from unrelated business taxable income the gain or loss on the sale or exchange of certain brownfield sites, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I am pleased to join my colleague Senator INHOFE, and my other Senate colleagues in introducing the Brownfield Revitalization Act of 2003. Given the nature of this legislation—establishing tax incentives to encourage cleanup of environmentally contaminated property across the country—it is appropriate that this be a joint introduction between the Chairman of the Senate Environment and Public Works Committee and the Ranking Member of the Senate Finance Committee. This legislation is bipartisan, but it is also bicameral. A companion bill was introduced earlier this week in the House of Representatives by Congresswoman NANCY JOHNSON and Congressman XAVIER BECERRA.

Across the United States, environmentally contaminated sites endanger public health, impede economic development, and negatively impact tax rolls. The United States has an estimated 1,000,000 such properties scattered across our inner cities and rural areas alike.

In my own State of Montana, there are well over 5,000 such sites. This may seem surprising for a state like Montana that is relatively undeveloped and pristine. But we are by no means unaffected by the scourge of environmental contamination. In addition to contamination caused by leaking underground storage tanks and contamination caused by other light industries, Montana also has been impacted by significant contamination left behind by some of the very industries that built our great state.

Contaminated sediments can be found along the Clark Fork River from Butte, MT, downstream for 140 miles to Missoula and on into Idaho—a legacy of the copper mining and smelting operations at Butte and Anaconda.

Tremolite asbestos contamination is prevalent at numerous sites around Libby, MT, including the local high school and middle school tracks—a legacy from the Zonlite Mine that began operating in the 1920s and produced 80 percent of the world's supply of vermiculite. These industries created wealth and jobs for generations of Montanans. Today, however, contamination from wood processing facilities, abandoned mines, and numerous other activities have harmed human health and the environment and continue to stifle the development of new business in Montana. These sites are well known to Montanans: Sites such as Missoula Sawmill site and the White Pine Sash site in Missoula, the Missouri River Corridor site in Great Falls, and sites in Helena, Bozeman, Billings and numerous other communities all across Montana. We can and must do more to help revitalize these important areas.

Congress has undertaken a number of initiatives to address the brownfield problem in this country. I am proud to have been able to play a leadership role in passing the Brownfields Revitalization and Reinvestment Act of 2001. That bill has helped provide new Federal funds for evaluation and remediation of brownfield sites and has helped to resolve some of the liability issues that were inhibiting remediation of these contaminated properties.

But, We must do more. The U.S. Chamber of Commerce has estimated that at the current rate of cleanup, it will take 10,000 years for us to remediate all of the contaminated sites in America. The United States Environmental Protection Agency, in an analysis conducted with George Washington University, concluded that the remediation ''costs for all of the brownfields located within the United States have been estimated to exceed $650 billion,'' and that, consequently, ''it is imperative that private capital be attracted to the redevelopment of brownfields.''

Late last year, Senator GRASSLEY and I entered a colloquy in the CONGRESSIONAL RECORD expressing our concern that certain provisions in the tax code are having the unintended consequence of discouraging investment in the remediation and redevelopment of our nation's polluted sites. In that colloquy, we pledged to get our arms around this issue and to draft legislation to correct this problem. I am pleased that we are standing here today to introduce legislation to do just that.

Let me briefly describe the basis for this bill and the means by which this legislation will dramatically accelerate the remediation of contaminated lands in America.

Today, tax-exempt investors such as university endowments, private pension funds, and charitable foundations can invest their capital in the stock market and certain real estate transactions that do not clean the environment without fear of incurring an Unrelated Business Income Tax, or UBIT, on any gains they make from their investments.

Because UBIT-sensitive entities hold over $6 trillion dollars in financial assets and routinely deploy more capital in real estate projects than any other category of investor, the unintended consequence of UBIT has been to drive our nation's biggest and most active real estate investors away from projects focused on the remediation and redevelopment of polluted properties.

This bill seeks to address this problem by allowing eligible tax-exempt entities to invest in the cleanup and redevelopment of qualified contaminated properties without incurring unrelated business income tax at the time they sell the property.

The legislation accomplishes this goal by concentrating on three basic tasks: 1. focus investment on moderately and heavily polluted properties, 2. require taxpayers to work with the State authorities and the public to ensure adequate clean up, and 3. ensure that the legislation is tightly crafted to prevent abuse.

First, this bill focuses on moderately and heavily polluted properties.

Section 198 of the tax code contains a structure under which designated state environmental agencies certify contaminated property that is eligible for special rules concerning deductions of remediation costs. This bill uses this existing structure to identify and certify contaminated sites that are eligible for inclusion within this bill. Prior to requesting certification from a state agency, the taxpayer is required to provide the agency with site characterizations, assessments and other documentation illustrating the scope and character of the pollution problem at the target site.

The legislation maintains its focus on moderately and heavily contaminated properties by requiring taxpayers to expend on remediation of each site the greater of $550,000 or 12 percent of the fair market value of the site, assessed as though the site were not contaminated. These remediation thresholds have intentionally been set higher than he typical range of costs reported to the Environmental Protection Agency to clean up brownfield sites nationwide. By establishing such high remediation thresholds, the legislation excludes incidentally or trivially contaminated property and focuses new capital investment on those sites most in need of additional assistance.

Second, this bill requires taxpayers to work with affected states and the public to ensure adequate clean up.

In addition to requiring high levels of remediation expenditures on each site, the legislation contains numerous other safeguards designed to ensure that remediation of each site is performed to state specifications and with full public involvement.

Similar to the front-end certification that is required to classify properties as truly contaminated, the legislation requires the taxpayer to obtain a tail-end certification from the state agency indicating that the site has been cleaned up and is no longer considered a brownfield. Prior to applying for this certification, the taxpayer must provide the State agency with sufficient information and documentation to allow the state agency to make this determination. In particular, the taxpayer must certify and provide documentation that: there are no longer hazardous substances, pollutants or contaminants on the property that are complicating the redevelopment or reuse of the site, environmental remediation is complete or substantially complete in conformance with all applicable federal, state and local environmental laws and regulations, the property is suitable for more economically productive or environmentally beneficial uses than at the time of acquisition, if additional activities are required to complete remediation, sufficient financial assurances and institutional controls are in place to complete the remediation in as short a time as possible, and the public was notified and given the opportunity to comment on the remedial actions taken to clean up the property and, if necessary, on any longer-term remediation activities.

The provisions in this legislation are designed to create substantive thresholds that the tax-exempt entity must meet in order to qualify for the exemption from UBIT. This legislation does not alter the complex web of existing federal, state or local environmental laws, regulations or standards.

Third, this bill ensures that the legislation is tightly crafted to prevent abuse.

It is worth noting that this legislation has been drafted to contain numerous safeguards to prevent abuse of this program. The anti-abuse examples include the following. The taxpayer cannot be the party that has caused the pollution and cannot be otherwise related to the polluter. Also, all transactions, purchase of the property, sale of the property, expenditure of remediation funds, etc., must be arms-length transactions with parties unrelated to the taxpayer. Further, the taxpayer is not allowed to count any Federal funds, e.g. grants, etc., or other types of government payments and benefits toward and required remediation thresholds. There are also restrictions on how the taxpayer may treat costs across multiple properties, requiring that an election be made specifying when and which properties are considered for such purposes; this is intended to prevent cherry-picking among different properties once the election has been made. Moreover, the legislation contains special restrictions addressing the use of the legislation's provisions by partnerships and other pass-through entities including requiring that all partnerships under the bill be fractions-rule compliant.

Because this legislation is narrowly crafted, and because tax-exempt entities are not currently investing in these sites, and thus are not paying UBIT, the Joint Committee on Taxation has concluded that this legislation will actually generate revenue for the Federal treasury during the first three years after enactment and that it will cost $10 million over five years and $192 million over ten years.

Further, because the legislation will accelerate cleanup of brownfield sites, create jobs, stimulate the economy, reduce blight and public health concerns, and because the bill has an acceptable fiscal impact, this legislative approach has been endorsed by Environmental Defense, the U.S. Chamber of Commerce, the National Taxpayers Union, and the U.S. Conference of Mayors, as well as numerous local, state and regional organizations and municipalities.

Passage of this bill will dramatically increase the speed at which our country's contaminated properties are remediated and brought back into productive taxable use. This narrowly crafted legislation will create jobs, increase tax revenues, and protect the environment—all accomplished without creating new government programs or regulations and all at a minimal cost to the Federal treasury.

I am pleased to be introducing this legislation with my colleague from Oklahoma. I look forward to working together to enact this legislation into law.

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

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

S. 1936

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

SECTION 1. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) IN GENERAL.—Subsection (b) of section 512 of the Internal Revenue Code of 1986 (relating to unrelated business taxable income) is amended by adding at the end the following new paragraph:

''(18) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES..—

''(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

''(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible taxpayer' means, with respect to a property, any organization exempt from tax under section 501(a) which—

''(I) acquires from an unrelated person a qualifying brownfield property, and

''(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

''(ii) EXCEPTION.—Such term shall not include any organization which is—

''(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

''(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

''(III) the result of a reorganization of a business entity which was so potentially liable.

''(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualifying brownfield property' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

''(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

''(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

''(I) such property is transferred by the eligible taxpayer to an unrelated person, and

''(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

''(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

''(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

''(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

''(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

''(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

''(V) Public notice that such request for certification would be made was completed before the date of such request. Such notice shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

''(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

''(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'eligible remediation expenditures' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

''(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

''(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

''(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

''(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or

regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

''(ii) EXCEPTIONS.—Such term shall not include—

''(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

''(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

''(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

''(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

''(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

''(G) SPECIAL RULES FOR PARTNERSHIPS.—

''(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

''(ii) QUALIFYING PARTNERSHIP.—The term 'qualifying partnership' means a partnership which—

''(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

''(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if 'qualified partnership' is substituted for 'eligible taxpayer' each place it appears therein (except subparagraph (D)(iii)), and

''(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

''(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

''(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

''(I) the use of special allocations of gains or losses, or

''(II) changes in ownership of partnership interests held by eligible taxpayers.

''(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

''(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

''(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

''(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

''(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

''(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

''(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

''(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

''(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting '25 percent' for '50 percent' each place it appears therein, and

''(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(b) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 514(b)(1) of the Internal Revenue Code of 1986 (defining debt-financed property) is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ''; or'', and by inserting after subparagraph (D) the following new subparagraph:

''(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(18) in computing the gross income of any unrelated trade or business.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after the date of the enactment of this Act.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. DASCHLE, Mr. CONRAD, and Mr. GRAHAM of Florida):

S. 1937. A bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Tax Shelter Transparency and Enforcement Act. I am pleased to be joined by my good friend, the Chairman of the Senate Finance Committee, Chairman GRASSLEY.

He and I introduced similar legislation in the last Congress. And, just this year, the Finance Committee approved this legislation as part of the CARE Act, the energy bill, the Jobs and Growth Act, and the Jumpstart Our Business Strength Act.

But why do we need this legislation? It has been more than 2 years since the collapse of Enron.

Since then, numerous other corporate scandals have come to light, thousands of employees have lost their jobs and pension savings, and the aftershock has yet to settle down in the stock market.

But there is one thing that has not happened. This Congress has failed to send to the President one single piece of tax legislation designed to shut down the kinds of abusive tax shelters we saw Enron use and that we know many others use.

Every day that we fail to address this scandal, honest taxpayers pay the bill.

A recent study commissioned by the IRS estimated that abusive corporate tax shelters alone cost honest taxpayers from $14 billion to $18 billion each year. That means up to $180 billion over ten years.

Simply put, this abuse of our tax laws has got to stop.

Abusive tax shelters are widespread—and not new.

As early as 1995, the Clinton Administration undertook a comprehensive, multi-faceted effort to tackle the problem of corporate tax shelters. This included legislative proposals to halt the

sale and marketing of shelters. Regulatory action to clamp down on illicit activity. And steps to better identify and pursue abusive transactions.

The current Administration has added to the list of identified tax shelters and supported legislative proposals to ensure greater disclosure.

This is not—and should not be—a partisan issue.

The proliferation of abusive tax shelters hurts the entire tax system. Specifically, it places a greater tax burden on those Americans who are honestly and patriotically paying their fair share of taxes—whether they are republican, democrat, or independent.

These shelters undermine the confidence of the American people in the fairness of the tax system. Abusive tax shelters place honest corporate competitors at a disadvantage.

And shutting down these abuses presents a great opportunity for Congress to restore fairness in the system.

We should do no less.

Let me take a few moments to discuss the nature of these tax shelters. Why they are wrong. And how purportedly reputable companies and professional advisors are participating in a disturbing race to the bottom.

First, what are these tax shelters?

Let me give you just one example of a tax shelter.

On October 20th, the Finance Committee held a hearing on tax shelters. This hearing was a follow-up to a hearing earlier this year to review the Committee's investigative report on the collapse of Enron.

At our hearing last month, we heard how some American corporations are purportedly buying and then leasing bridges, dams, subway systems, and other infrastructure through corporate tax shelters.

It's like the old line: If you think these tax shelter transactions are legitimate—or what Congress intended—have I got a bridge to sell you.

A former leasing industry executive, who testified before the Finance Committee, described complex transactions where U.S. companies make a single payment to a municipality to lease a bridge or other public infrastructure. These companies then lease the infrastructure back to the city. All along, the company takes a deduction on its U.S. taxes for the depreciation of the high valued asset.

The companies never pay any real lease payments to the cities. And the cities never pay any lease payments to the companies. The cities never risk losing control of the bridge, dam, or subway system.

But the companies—who include major banks and Fortune 500 companies—take millions and millions of dollars in deductions for what is essentially a paper transaction. And the American taxpayer is left holding the bill.

The witness testified: ''[M]uch of the old and new infrastructure throughout Europe has been leased to, and leased back from, American corporations.''

In essence, in these transactions, the American people, through their tax dollars, are providing these companies a subsidy, part of which the companies pocket, and part of which they transfer to these cities.

As Yale law school Professor Michael Graetz once said, a tax shelter is a ''deal done by very smart people, that, absent tax considerations, would be very stupid.''

This is nothing more than an unwarranted tax subsidy to U.S. companies courtesy of honest taxpayers. It is simply wrong. It rewards a transaction with no real economic substance.

This has got to stop. And it is up to Congress and the President to put an end to this kind of abuse.

So how did this tax shelter industry develop?

If there is one thing that we should have learned from the Enron scandal, it is the pervasive role of lawyers and accountants.

Why did some of the country's leading professional firms devote so much effort to spinning reported earnings out of nothing? And what does that say about the erosion of ethical standards for accountants and lawyers?

In 1908, the American Bar Association adopted its first code of ethics.

The preamble to their Model Rules states that a lawyer serves his client, but is also ''an officer of the legal system and a public citizen having special responsibility for the quality of justice.''

It also states that a lawyer should ''further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.''

In 1946, the Executive Director of the American Institute of Accountants—the predecessor to the American Institute of Certified Public Accountants—stated that:

> The very existence of the accounting profession depends on public confidence in the determination of certified public accountants to safeguard the public interest. This confidence can be maintained only by evidence of both technical competence and moral obligation. One item of evidence is promulgation and enforcement of rules of professional conduct.

So, why did the legal and accounting profession fail to follow their own principles. And, why did they fail to police themselves?

Part of the problem stems from the 1990s practices of investment bankers and venture capitalists—taking a piece of the deal or a piece of the upside performance. This behavior spread into almost every public company.

And, following their clients, accountants and lawyers also began adopting these practices. Add to this an enormous pressure on company executives to hit revenue and earnings targets on a quarterly basis.

Amidst this obsession with short-term results, no one was left to look after the company's long-term survival.

At the same time, lawyers and accountants faced their own profit pressures as their compensation was tied to their ''book of business'' and their success in cross-selling different services to their clients.

These cultural conflicts presented a threat to professional values.

For auditing firms, traditional professional values mean attesting to investors and lenders that the company's financial statements are properly prepared and reflect all material issues.

The business culture, however, encouraged the auditor to serve company executives—not only to refrain from pushing back, but also to affirmatively help them achieve their personal goals.

Furthermore, audit services themselves became more and more of a low-profit business, as audit firms battled each other to gain the inside audit position—which could help them market high-profit services. The big money was in selling tax-engineered products.

Finally, the private interests of the accounting professional and the corporate executive converged on one kind of activity that has proved particularly toxic—the proprietary financial maneuver that boosted reported earnings. That means, manipulate the bottom line of the financial statements.

Such maneuvers satisfied the executives' need to feed the markets and keep stock prices afloat.

They also satisfied the accountant's need for generating large profits for their firm and for their own bonus formula.

Similarly, for law firms, the traditional professional values are associated with loyalty to the client and advocacy of the client's interests within the bounds of the law.

Yet, loyalty to the corporate client and attention to corporate risks came to be sorely tested in many instances.

A company executive could well be more interested in getting a deal done—and getting the legal opinion needed to support the accounting analysis—than in gaining an accurate understanding of the legal merits of the issue and the associated risks to the company.

A law firm might even have its own stake in getting the deal done—because of a bonus or contingency fee associated with completing the deal—or because of having assisted a promoter in developing the deal.

In many accounting and tax schemes, executives simply did not want a frank assessment of legal merits and risks.

Instead, what they sought was a professional opinion that would justify hiding the true nature of a transaction from readers of financial reports and tax returns.

This was not legal advice on the merits—it was advice that was needed to justify hiding the ball.

Clearly, some accounting firms and law firms have abandoned ethics for the big dollar bonus.

As an extreme example, there were many people in the Arthur Andersen

Houston office who knew about the destruction of Enron documents. Not one appears to have realized that what they were doing was terribly wrong. Apparently, not one of these professionals even thought to check with anyone elsewhere in the firm about whether or not what they were doing was wrong.

Professional firms also have been all too willing to let themselves be compartmentalized. This way, they could say ''That wasn't my job'' when things went wrong.

Consider the case of prominent law firms that provided tax opinions for investment banks and other promoters to use in selling tax shelter products.

These opinions described the consequences of complicated tax maneuvers—based on the assumption that the future tax shelter purchaser would have a valid business purpose. And on the assumption that the transaction would not be tweaked further to reduce financial risk to almost nothing.

It may have been true that these firms were asked to provide advice based on those implausible assumptions. But that does not justify allowing the firm's professional reputation to be used to market tax shelters. The lawyers simply must have known that no purchaser could realistically be expected to supply the critical assumed facts.

The Enron case of using tax shelters to generate phantom financial earnings also seems to reflect a cycle of ''That wasn't my job'' role-playing.

The tax lawyers found a business purpose for the transaction because it generated financial earnings.

The accountants found financial earnings because the transaction promised future tax reductions. It all seems a bit circular.

And it all assumes that creating misleading earnings reports is in the real business interest of the corporation. Again, the professionals appear to have lost track of who their real client was.

Now, what do we need to do about this?

Congress and Federal regulators started to address these issues with the Sarbanes-Oxley Act of 2002.

For example, Sarbanes-Oxley calls for lawyers practicing before the SEC to report evidence of securities violations ''up the chain'' of their corporate clients—ultimately to corporate boards.

And the Act calls for auditors to report directly to the corporate board's audit committee. And, provide a number of safeguards to assure that audit committees have the independence and autonomy needed to represent corporate interests and not personal interests.

The Sarbanes-Oxley Act also addresses auditor independence in ways that respond to the business pressures that I described earlier.

Audit partners cannot be compensated based on cross-selling. Audit personnel must be rotated periodically. And a one-year cooling off period is required in the case of individuals moving between employment at an audit firm and employment at an audit client.

Public companies are prohibited from obtaining certain non-audit services from their auditor, and all other non-audit services require prior approval of the board's audit committee.

But these changes just nibble at the edges of the bigger problem. We have to reign in these lawyers, accountants, and investment bankers who are out there manipulating the tax code to come up with tax shelter schemes.

The tax shelter legislation that Chairman GRASSLEY and I introduce today goes to the heart of the tax schemes problem.

For example, the bill ensures that transactions are done for legitimate business purposes. That means that transactions must have economic substance and are not done merely to avoid taxes.

It makes it explicit that achieving a particular kind of financial accounting treatment does not provide the needed ''business purpose'' to satisfy tax requirements.

The bill also provides for stiff penalties that are needed to back up Treasury's new shelter disclosure requirements.

As a Treasury official pointed out, ''[I]f a promoter is comfortable with selling a transaction. If a practitioner is comfortable with advising that the transaction is proper. And if a taxpayer is comfortable with entering into that transaction. Then they should all be comfortable with the IRS knowing about the transaction.''

Our bill also broadens the IRS's ability to enjoin tax shelter promoters and allows the agency to impose monetary penalties—in addition to suspension or disbarment—on disreputable tax advisors or their firms.

And more may be needed, from both government and the private sector.

For one thing, we need to also pass Senator LEVIN's bill, S. 1767, the Auditor Independence and Tax Shelters Act. I am pleased to be an original co-sponsor of that legislation. The Auditor Independence and Tax Shelters Act compliments the legislation that I am introducing today.

Senator LEVIN's legislation shuts down tax shelter promotion from the audit and financial statement side of the equation. Specifically, S. 1767 would strengthen auditor independence by prohibiting them from providing tax shelter services to their audit clients.

The legislation would also reduce potential auditor conflicts of interest by codifying four auditor independence principles to guide the audit committees of the Board of Directors of a publicly traded company, when that committee is required by the Sarbanes-Oxley Act to decide whether the company may provide certain non-audit services to the corporation.

Next, the SEC and the new Public Accounting Oversight Board should devote significant resources to considering ways to improve the clarity of the tax footnote in the company's financial statements.

They should also undertake a comprehensive review of financial reporting of income taxation. These agencies should also ensure that they have tax experts to ensure proper oversight investigations and reviews of the financial statement tax disclosures.

The IRS should improve the clarity of the already-required reconciliation between book and tax earnings on the corporate tax return—the Schedule M–1.

And we need to have better communication and coordination between the various federal departments and agencies with oversight over lawyers, accountants and investment bankers. The Department of Treasury, the IRS, the Department of Justice, the SEC, and the Public Accounting Oversight Board should talk to each other and not fall into the ''it's not my job'' mindset.

The Sarbanes-Oxley Act also empowers the Public Company Accounting Oversight Board to describe new non-audit services that public companies could not acquire from their auditors, even if they are not explicitly described in the statute as a prohibited service.

The Accounting Oversight Board should review the record of SEC rulemaking in this area, as well as ongoing business practices, and take action if it is needed to assure the public interest in auditor independence.

Finally, professional firms need to cultivate professional cultures. The Enron scandal should serve as a wake-up call to all of us, but particularly the professionals.

Law firms and accounting firms must be sure that their members and employees understand the nature of corporate representation and who the client is.

Everyone who works at the firm needs to understand that the firm is committed to integrity and quality. And to understand that the firm's leaders will listen and react if legitimate questions arise.

Professionals should resist the tendency to avert their eyes to obvious issues on the grounds that they are technically someone else's responsibility.

In the best traditions of both the accounting and legal professions, the work of the professional must be guided by commitments to professional duty, fair dealing, and honesty.

I hope that the leaders of the accounting and legal professions understand how important this is, and take the actions needed to give new vitality to these great traditions.

Every Spring, Americans sit down at the kitchen table, or at their home computer, and figure out their taxes.

With quiet patriotism, these Americans step up and pay their fair share. They are counting on us to make sure

that sophisticated corporations pay their fair share as well.

I am simply unwilling to tell the school teacher in Montana that he needs to pony up a little more because Congress is unwilling to shut down a loophole that is costing tens of billions every year.

I look forward to continuing to work with the Chairman of the Finance Committee, Senator GRASSLEY, to see the Tax Shelter Transparency and Enforcement Act through to enactment.

I also urge all of my congressional colleagues—in the House and the Senate—to join forces to send tax shelter legislation to the President for his signature.

We need to act to close these tax shelters and restore professional ethics. And we need to act before the next big scandal comes. Congress cannot ignore the problem any longer.

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. 1937

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Shelter Transparency and Enforcement Act''.

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

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

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

Sec. 101. Clarification of economic substance doctrine.
Sec. 102. Penalty for failing to disclose reportable transaction.
Sec. 103. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 104. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 105. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 106. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 107. Disclosure of reportable transactions.
Sec. 108. Modifications to penalty for failure to register tax shelters.
Sec. 109. Modification of penalty for failure to maintain lists of investors.
Sec. 110. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 111. Understatement of taxpayer's liability by income tax return preparer.
Sec. 112. Penalty on failure to report interests in foreign financial accounts.
Sec. 113. Frivolous tax submissions.
Sec. 114. Regulation of individuals practicing before the Department of Treasury.
Sec. 115. Penalty on promoters of tax shelters.
Sec. 116. Statute of limitations for taxable years for which required listed transactions not reported.
Sec. 117. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
Sec. 118. Authorization of appropriations for tax law enforcement.

TITLE II—OTHER CORPORATE GOVERNANCE PROVISIONS

Sec. 201. Affirmation of consolidated return regulation authority.
Sec. 202. Signing of corporate tax returns by chief executive officer.
Sec. 203. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 204. Disallowance of deduction for punitive damages.
Sec. 205. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

TITLE III—ENRON-RELATED TAX SHELTER PROVISIONS

Sec. 301. Limitation on transfer or importation of built-in losses.
Sec. 302. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 303. Repeal of special rules for FASITs.
Sec. 304. Expanded disallowance of deduction for interest on convertible debt.
Sec. 305. Expanded authority to disallow tax benefits under section 269.
Sec. 306. Modification of interaction between subpart F and passive foreign investment company rules.

TITLE I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

SEC. 101. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the

requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 102. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 103. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective

meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

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

SEC. 104. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 105. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

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

SEC. 106. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 107. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 108. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 109. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 110. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 111. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

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

SEC. 112. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 113. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 114. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 115. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 116. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 117. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''.

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

SEC. 118. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

TITLE II—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 201. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 202. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by inserting after the first sentence the following new sentences: ''The return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the chief executive officer ensures that such return complies with this title and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 203. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by

suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution for damage or harm caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 204. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 205. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

TITLE III—ENRON-RELATED TAX SHELTER PROVISIONS

SEC. 301. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.''.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph)

exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after February 13, 2003.

SEC. 302. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 303. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) Section 1272(a)(6)(B) is amended by adding at the end the following new flush sentence:

''For purposes of clause (iii), the Secretary shall prescribe regulations permitting the use of a current prepayment assumption, determined as of the close of the accrual period (or such other time as the Secretary may prescribe during the taxable year in which the accrual period ends).''.

(11) Subparagraph (C) of section 7701(a)(19) is amended by adding ''and'' at the end of clause (ix), by striking '', and'' at the end of clause (x) and inserting a period, and by striking clause (xi).

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

(B) TRANSFER OF ADDITIONAL ASSETS NOT PERMITTED.—Except as provided in regulations prescribed by the Secretary of the Treasury or the Secretary's delegate, subparagraph (A) shall cease to apply as of the earliest date after the date of the enactment of this Act that any property is transferred to the FASIT.

SEC. 304. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by striking ''or a related party'' and inserting ''or equity held by the issuer (or any related party) in any other person''.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 305. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 306. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

Mr. GRASSLEY. Mr. President, I rise today to co-sponsor legislation, the ''Tax Shelter Transparency and Enforcement Act″to address the continuing proliferation of tax shelters. This bill reflects tax shelter measures that have been passed by the Senate Finance Committee in the Jobs and Growth Tax Relief Act of 2003, the CARE Act, the JOBS Act, and the Energy bill. The full Senate has passed these shelters provisions twice this year.

We have known for many years that abusive tax shelters, which are structured to exploit unintended consequences of our complicated Federal income tax system, erode the federal tax base and the public's confidence in the tax system. Such transactions are patently unfair to the vast majority of taxpayers who do their best to comply with the letter and spirit of the tax law. The Finance Committee produced its first draft of tax shelter legislation in 1999, and has produced several subsequent bills, each of which were enhanced to attack new developments in abusive tax shelters. The most recent Finance Committee bill was the Tax Shelter Transparency Act in May 2002. Today's bill builds on that 2002 legislation by adding certain corporate governance provisions, the recommendations from the Finance Committee's tax shelter investigation of Enron, and a proposal to clarify the judicial economic substance doctrine.

The Finance Committee has worked exceedingly hard over many several years to develop a legislative response to tax shelters, and the bill we offer today may not be the final word in that response. Thoughtful and well-considered comments on the provisions in this bill have been greatly appreciated by the staff and members of the Finance Committee, and will be considered in further refining today's bill, particularly with respect to clarification of the economic substance doctrine.

In our ongoing efforts to end tax shelters, we have attacked the issue on several fronts. We have introduced numerous measures to end specific shelter abuses as they are discovered. We have offered legislation attacking corporate inversions, individual expatiations, and corporate deductions for phony leases of tax-payer funded subways, bridges, and water lines. I have pursued public disclosure of the differences in the income on financial statements reported by public companies to their shareholders, and the income the company reports to the IRS on its tax return. I have written to the President, Treasury and SEC to encourage them to consider this idea.

During the Senate's 2002 deliberation of the Sarbanes-Oxley bill, I attempted to add an amendment that would have prohibited auditors from opining on the financial statement results of tax shelters that they had sold to an audit client. I was blocked in my attempt to offer that amendment, with several members expressing skepticism about the need for such a measure. I suspect that today, however, few members would have such reservations.

On October 21st, 2003, the Senate Finance Committee conducted a hearing to determine if tax shelters were a continuing problem. Not only are they continuing, they are now expanding to mid-level companies and wealthy individuals, many of whom have been duped into engaging in shelter transactions. During our hearing, we heard testimony from taxpayers who relied on reputable tax professionals and accounting firms for sound tax advice, but unknowingly purchased tax shelters that were peddled by those trusted professionals through a web of collusion and deception. We also heard from employees of large accounting firms and major corporations who testified regarding the pressure exerted on them to bless transactions that, in their professional opinions, would constitute abusive tax shelters. The price for their integrity was the loss of their jobs and the ruin of their career. Tax shelter abuse must be stopped for the sake of fairness, the integrity of our tax system, and the protection of honest tax professionals.

Our years of work on this issue was recently reaffirmed in a hearing before the Permanent Subcommittee on Investigations, which explored abusive shelters that were promoted by purportedly reputable tax lawyers and accounting firms. Following that hearing, there has been considerable discussion of promoting an amendment similar to the one I offered in 2002 during the Sarbanes-Oxley debate, and I am appreciative of that effort. I hope we are able to construct a measure that can be readily enforced by the Public Accounting Oversight Board and the SEC, even though that agency lacks expertise in, or jurisdiction over, federal tax matters.

At its core, however, the problem is not an SEC matter, but is a problem of ongoing abuse of the tax code by very smart people doing some very ugly business. The only way to end this problem is to put it out in the open. Even the most cynical tax advisor does not want their dirty laundry in the public eye, particularly if that public includes the IRS. That is why disclosure of abusive or potentially abusive transactions is so important in solving this problem.

The Tax Shelter Transparency and Enforcement Act requires taxpayer disclosure of potentially abusive tax avoidance transactions. It is surprising and unfortunate that taxpayers, though required to disclose tax shelter transactions under present law, have refused to comply. The Tax Shelter Transparency and Enforcement Act will curb non-compliance by providing clearer and more objective rules for the reporting of potential tax shelters and by providing strong penalties for anyone who refuses to comply with the revised disclosure requirements.

The legislation has been carefully structured to reward those who are forthcoming with disclosure. I wholeheartedly agree with the remarks offered by a former Treasury Assistant Secretary for Tax Policy, that ''if a taxpayer is comfortable entering into a transaction, a promoter is comfortable selling it, and an advisor is comfortable blessing it, they all should be comfortable disclosing it to the IRS.'' Transparency is essential to an evaluation by the IRS and ultimately by the Congress of the United States as to whether the tax benefits generated by complex business transactions are appropriate interpretations of existing tax law.

It is time to get this bill done. The Finance Committee has worked on rooting out tax shelters for nearly five years, and we have debated the issue long enough. The time to act is now. I will vigorously pursue enactment of an anti-tax shelters bill in the upcoming year. I think we can all take pride in the Senate's consistent action of passing the measures in today's bill. We must press forward to put a final end to the seemingly endless abuse of tax shelters.

By Mr. CORZINE (for himself, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. REED):

S. 1938. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as Ancient forests, roadless areas, watershed protection areas, and special areas where logging and other intrusive activities are prohibited; to the Committee on Energy and Natural Resources.

Mr. CORZINE. Mr. President, today along with Senators SCHUMER, LAUTENBERG, and REED, I am introducing the Act to Save America's Forests. This important legislation is designed to protect our national forests from needless clearcutting, safeguard our roadless areas, and preserve the last remaining stands of Ancient forests in this country.

There used to be over one billion acres of forest on the land that is now

the United States. Over 95 percent of that original forest has been logged, and less than one percent is in a form large enough to support all the native plants and animals. This land is under continuous threat, and if we don't act now to protect these Ancient forests we might lose many of them forever.

Our national forests also are under attack by clearcutting. Removing huge groups of trees at once creates a blighted landscape, destroys wildlife habitats, increases soil erosion, and degrades water quality. In the last ten years, over a quarter-million acres of our national forests were clearcut. Clearcutting destroys a vibrant, ecologically diverse natural forest, which is usually replaced, if at all, with a single species tree farm: tightly packed rows of the most profitable trees. This is forest management focused solely on economics, not ecology. And it is not the way to save America's forests.

This bill is a balanced, scientific approach to forest management. It bans all logging operations in roadless areas, Ancient forests, and forests that have extraordinary biological, scenic, or recreational values. These are our most fragile ecosystems and need to be protected. This bill also bans clearcutting in our national forests except in specific cases where complete removal of non-native invasive tree species is ecologically necessary.

However, this bill does not ban all logging in our national forests. It allows a method of logging called ''selection management,'' which cuts individual trees instead of the whole forest, leaving a healthy, diverse woodland. Selection management is less harmful to the soil, less destructive to wildlife, and less disturbing to people who enjoy the scenic beauty of our forests. Selection management can be sustainable and profitable, as demonstrated by a number of private forests around the country.

This legislation emphasizes biodiversity and sustainable management, allowing ecologically sound logging practices in some of our national forestland and fully protecting the rest. That's why over 600 scientists, including Dr. Jane Goodall and Dr. E.O. Wilson, and the Union of Concerned Scientists, support this bill. I am proud to introduce this legislation to protect and restore America's public forests, and 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. 1938

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Act to Save America's Forests''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
TITLE I—LAND MANAGEMENT
Sec. 101. Committee of scientists.
Sec. 102. Continuous forest inventory.
Sec. 103. Administration and management.
Sec. 104. Conforming amendments.
TITLE II—PROTECTION FOR ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS
Sec. 201. Findings.
Sec. 202. Definitions.
Sec. 203. Designation of special areas.
Sec. 204. Restrictions on management activities in Ancient forests, roadless areas, watershed protection areas, and special areas.
TITLE III—EFFECTIVE DATE
Sec. 301. Effective date.
Sec. 302. Effect on existing contracts.
Sec. 303. Wilderness act exclusion.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Federal agencies that permit clearcutting and other forms of even-age logging operations include the Forest Service, the United States Fish and Wildlife Service, and the Bureau of Land Management;

(2) clearcutting and other forms of even-age logging operations cause substantial alterations in native biodiversity by—

(A) emphasizing the production of a limited number of commercial species, and often only a single species, of trees on each site;

(B) manipulating the vegetation toward greater relative density of the commercial species;

(C) suppressing competing species; and

(D) requiring the planting, on numerous sites, of a commercial strain of the species that reduces the relative diversity of other genetic strains of the species that were traditionally located on the same sites;

(3) clearcutting and other forms of even-age logging operations—

(A) frequently lead to the death of immobile species and the very young of mobile species of wildlife; and

(B) deplete the habitat of deep-forest species of animals, including endangered species and threatened species;

(4)(A) clearcutting and other forms of even-age logging operations—

(i) expose the soil to direct sunlight and the impact of precipitation;

(ii) disrupt the soil surface;

(iii) compact organic layers; and

(iv) disrupt the run-off restraining capabilities of roots and low-lying vegetation, resulting in soil erosion, the leaching of nutrients, a reduction in the biological content of soil, and the impoverishment of soil; and

(B) all of the consequences described in subparagraph (A) have a long-range deleterious effect on all land resources, including timber production;

(5) clearcutting and other forms of even-age logging operations aggravate global climate change by—

(A) decreasing the capability of the soil to retain carbon; and

(B) during the critical periods of felling and site preparation, reducing the capacity of the biomass to process and to store carbon, with a resultant loss of stored carbon to the atmosphere;

(6) clearcutting and other forms of even-age logging operations render soil increasingly sensitive to acid deposits by causing a decline of soil wood and coarse woody debris;

(7) a decline of solid wood and coarse woody debris reduces the capacity of soil to retain water and nutrients, which in turn increases soil heat and impairs soil's ability to maintain protective carbon compounds on the soil surface;

(8) clearcutting and other forms of even-age logging operations result in—

(A) increased stream sedimentation and the silting of stream bottoms;

(B) a decline in water quality;

(C) the impairment of life cycles and spawning processes of aquatic life from benthic organisms to large fish; and

(D) as a result of the effects described in subparagraphs (A) through (C), a depletion of the sport and commercial fisheries of the United States;

(9) clearcutting and other forms of even-age management of Federal forests disrupt natural disturbance regimes that are critical to ecosystem function;

(10) clearcutting and other forms of even-age logging operations increase harmful edge effects, including—

(A) blowdowns;

(B) invasions by weed species; and

(C) heavier losses to predators and competitors;

(11) by reducing the number of deep, canopied, variegated, permanent forests, clearcutting and other forms of even-age logging operations—

(A) limit areas where the public can satisfy an expanding need for recreation; and

(B) decrease the recreational value of land;

(12) clearcutting and other forms of even-age logging operations replace forests described in paragraph (11) with a surplus of clearings that grow into relatively impenetrable thickets of saplings, and then into monoculture tree plantations;

(13) because of the harmful and, in many cases, irreversible, damage to forest species and forest ecosystems caused by logging of Ancient and roadless forests, clearcutting, and other forms of even-age management, it is important that these practices be halted based on the precautionary principle;

(14) human beings depend on native biological resources, including plants, animals, and micro-organisms—

(A) for food, medicine, shelter, and other important products; and

(B) as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure;

(15) alteration of native biodiversity has serious consequences for human welfare, as the United States irretrievably loses resources for research and agricultural, medicinal, and industrial development;

(16) alteration of biodiversity in Federal forests adversely affects the functions of ecosystems and critical ecosystem processes that—

(A) moderate climate;

(B) govern nutrient cycles and soil conservation and production;

(C) control pests and diseases; and

(D) degrade wastes and pollutants;

(17)(A) clearcutting and other forms of even-age management operations have significant deleterious effects on native biodiversity, by reducing habitat and food for cavity-nesting birds and insectivores such as the 3-toed woodpecker and hairy woodpecker and for neotropical migratory bird species; and

(B) the reduction in habitat and food supply could disrupt the lines of dependency among species and their food resources and thereby jeopardize critical ecosystem function, including limiting outbreaks of destructive insect populations; for example—

(i) the 3-toed woodpecker requires clumped snags in spruce-fir forests, and 99 percent of its winter diet is composed of insects, primarily spruce beetles; and

(ii) a 3-toed woodpecker can consume as much as 26 percent of the brood of an endemic population of spruce bark beetle and reduce brood survival of the population by 70 to 79 percent;

(18) the harm of clearcutting and other forms of even-age logging operations on the natural resources of the United States and

the quality of life of the people of the United States is substantial, severe, and avoidable;

(19) by substituting selection management, as required by this Act, for clearcutting and other forms of even-age logging operations, the Federal agencies involved with those logging operations would substantially reduce devastation to the environment and improve the quality of life of the people of the United States;

(20) selection management—

(A) retains natural forest structure and function;

(B) focuses on long-term rather than short-term management;

(C) works with, rather than against, the checks and balances inherent in natural processes; and

(D) permits the normal, natural processes in a forest to allow the forest to go through the natural stages of succession to develop a forest with old growth ecological functions;

(21) by protecting native biodiversity, as required by this Act, Federal agencies would maintain vital native ecosystems and improve the quality of life of the people of the United States;

(22) selection logging—

(A) is more job intensive, and therefore provides more employment than clearcutting and other forms of even-age logging operations to manage the same quantity of timber production; and

(B) produces higher quality sawlogs than clearcutting and other forms of even-age logging operations; and

(23) the judicial remedies available to enforce Federal forest laws are inadequate, and should be strengthened by providing for injunctions, declaratory judgments, statutory damages, and reasonable costs of suit.

(b) PURPOSE.—The purpose of this Act is to conserve native biodiversity and protect all native ecosystems on all Federal land against losses that result from—

(1) clearcutting and other forms of even-age logging operations; and

(2) logging in Ancient forests, roadless areas, watershed protection areas, and special areas.

TITLE I—LAND MANAGEMENT

SEC. 101. COMMITTEE OF SCIENTISTS.

Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) is amended by striking subsection (h) and inserting the following:

''(h) COMMITTEE OF SCIENTISTS.—

''(1) IN GENERAL.—To carry out subsection (g), the Secretary shall appoint a committee composed of scientists—

''(A) who are not officers or employees of the Forest Service, of any other public entity, or of any entity engaged in whole or in part in the production of wood or wood products;

''(B) not more than one-third of whom have contracted with or represented any entity described in subparagraph (A) during the 5-year period ending on the date of the proposed appointment to the committee; and

''(C) not more than one-third of whom are foresters.

''(2) QUALIFICATIONS OF FORESTERS.—A forester appointed to the committee shall be an individual with—

''(A) extensive training in conservation biology; and

''(B) field experience in selection management.

''(3) DUTIES.—The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures and all other issues involving forestry and native biodiversity to promote an effective interdisciplinary approach to forestry and native biodiversity.

''(4) TERMINATION.—The committee shall terminate on the date that is 10 years after the date of enactment of the Act to Save America's Forests.''

SEC. 102. CONTINUOUS FOREST INVENTORY.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, each of the Chief of the Forest Service, the Director of the United States Fish and Wildlife Service, and the Director of the Bureau of Land Management (referred to individually as an ''agency head'') shall prepare a continuous inventory of forest land administered by those agency heads, respectively.

(b) REQUIREMENTS.—A continuous forest inventory shall constitute a long-term monitoring and inventory system that—

(1) is contiguous throughout affected Federal forest land; and

(2) is based on a set of permanent plots that are inventoried every 10 years to—

(A) assess the impacts that human activities are having on management of the ecosystem;

(B) gauge—

(i) floristic and faunistic diversity, abundance, and dominance; and

(ii) economic and social value; and

(C) monitor changes in the age, structure, and diversity of species of trees and other vegetation.

(c) DECENNIAL INVENTORIES.—Each decennial inventory under subsection (b)(2) shall be completed not more than 60 days after the date on which the inventory is begun.

(d) NATIONAL ACADEMY OF SCIENCES.—In preparing a continuous forest inventory, an agency head may use the services of the National Academy of Sciences to—

(1) develop a system for the continuous forest inventory by which certain guilds or indicator species are measured; and

(2) identify any changes to the continuous forest inventory that are necessary to ensure that the continuous forest inventory is consistent with the most accurate scientific methods.

(e) WHOLE-SYSTEM MEASURES.—At the end of each forest planning period, an agency head shall document whole-system measures that will be taken as a result of a decennial inventory.

(f) PUBLIC AVAILABILITY.—Results of a continuous forest inventory shall be made available to the public without charge.

SEC. 103. ADMINISTRATION AND MANAGEMENT.

The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended by adding after section 6 (16 U.S.C. 1604) the following:

''SEC. 6A. CONSERVATION OF NATIVE BIODIVERSITY; SELECTION LOGGING; PROHIBITION OF CLEARCUTTING.

''(a) APPLICABILITY.—This section applies to the administration and management of—

''(1) National Forest System land, under this Act;

''(2) Federal land, under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

''(3) National Wildlife Refuge System land, under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

''(b) NATIVE BIODIVERSITY IN FORESTED AREAS.—The Secretary shall provide for the conservation or restoration of native biodiversity in each stand and each watershed throughout each forested area, except during the extraction stage of authorized mineral development or during authorized construction projects, in which cases the Secretary shall conserve native biodiversity to the maximum extent practicable.

''(c) RESTRICTION ON USE OF CERTAIN LOGGING PRACTICES.—

''(1) DEFINITIONS.—In this subsection:

''(A) AGE DIVERSITY.—The term 'age diversity' means the naturally occurring range and distribution of age classes within a given species.

''(B) BASAL AREA.—The term 'basal area' means the area of the cross section of a tree stem, including the bark, at 4.5 feet above the ground.

''(C) CLEARCUTTING.—The term 'clearcutting' means an even-age logging operation that removes all of the trees over a considerable portion of a stand at 1 time.

''(D) CONSERVATION.—The term 'conservation' means protective measures for maintaining native biodiversity and active and passive measures for restoring diversity through management efforts, in order to protect, restore, and enhance as much of the variety of species and communities as practicable in abundances and distributions that provide for their continued existence and normal functioning, including the viability of populations throughout their natural geographic distributions.

''(E) EVEN-AGE LOGGING OPERATION.—

''(i) IN GENERAL.—The term 'even-age logging operation' means a logging activity that—

''(I) creates a clearing or opening that exceeds ⅕ acre;

''(II) creates a stand in which the majority of trees are within 10 years of the same age; or

''(III) within a period of 30 years, cuts or removes more than the lesser of—

''(aa) the growth of the basal area of all tree species (not including a tree of a non-native invasive tree species or an invasive plantation species) in a stand; or

''(bb) 20 percent of the basal area of a stand.

''(ii) INCLUSION.—The term 'even-age logging operation' includes the application of clearcutting, high grading, seed-tree cutting, shelterwood cutting, or any other logging method in a manner inconsistent with selection management.

''(iii) EXCLUSION.—The term 'even-age logging operation' does not include the cutting or removal of—

''(I) a tree of a non-native invasive tree species; or

''(II) an invasive plantation species, if native longleaf pine are planted in place of the removed invasive plantation species.

''(F) GENETIC DIVERSITY.—The term 'genetic diversity' means the differences in genetic composition within and among populations of a species.

''(G) HIGH GRADING.—The term 'high grading' means the removal of only the larger or more commercially valuable trees in a stand, resulting in an alteration in the natural range of age diversity or species diversity in the stand.

''(H) INVASIVE PLANTATION SPECIES.—The term 'invasive plantation species' means a loblolly pine or slash pine that was planted or managed by the Forest Service or any other Federal agency as part of an even-aged monoculture tree plantation.

''(I) NATIVE BIODIVERSITY.—

''(i) IN GENERAL.—The term 'native biodiversity' means—

''(I) the full range of variety and variability within and among living organisms; and

''(II) the ecological complexes in which the living organisms would have occurred (including naturally occurring disturbance regimes) in the absence of significant human impact.

''(ii) INCLUSIONS.—The term 'native biodiversity' includes diversity—

''(I) within a species (including genetic diversity, species diversity, and age diversity);

''(II) within a community of species;

''(III) between communities of species;

''(IV) within a discrete area, such as a watershed;

''(V) along a vertical plane from ground to sky, including application of the plane to all the other types of diversity; and

''(VI) along the horizontal plane of the land surface, including application of the plane to all the other types of diversity.

''(J) NON-NATIVE INVASIVE TREE SPECIES.—

''(i) IN GENERAL.—The term 'non-native invasive tree species' means a species of tree not native to North America.

''(ii) INCLUSIONS.—The term 'non-native invasive tree species' includes—

''(I) Australian pine (Casaurina equisetifolia);

''(II) Brazilian pepper (Schinus terebinthifolius);

''(III) Common buckthorn (Rhamnus cathartica);

''(IV) Eucalyptus (Eucalyptus globulus);

''(V) Glossy buckthorn (Rhamnus frangula);

''(VI) Melaleuca (Melaleuca quinquenervia);

''(VII) Norway maple (Acer platanoides);

''(VIII) Princess tree (Paulownia tomentosa);

''(IX) Salt cedar (Tamarix species);

''(X) Silk tree (Albizia julibrissin);

''(XI) Strawberry guava (Psidium cattleianum);

''(XII) Tree-of-heaven (Ailanthus altissima);

''(XIII) Velvet tree (Miconia calvescens); and

''(XIV) White poplar (Populus alba).

''(K) SEED-TREE CUT.—The term 'seed-tree cut' means an even-age logging operation that leaves a small minority of seed trees in a stand for any period of time.

''(L) SELECTION MANAGEMENT.—

''(i) IN GENERAL.—The term 'selection management' means a method of logging that emphasizes the periodic, individual selection and removal of varying size and age classes of the weaker, nondominant cull trees in a stand and leaves uncut the stronger dominant trees to survive and reproduce, in a manner that works with natural forest processes and—

''(I) ensures the maintenance of continuous high forest cover where high forest cover naturally occurs;

''(II) ensures the maintenance or natural regeneration of all native species in a stand;

''(III) ensures the growth and development of trees through a range of diameter or age classes to provide a sustained yield of forest products including clean water, rich soil, and native plants and wildlife; and

''(IV) ensures that some dead trees, standing and downed, shall be left in each stand where selection logging occurs, to fulfill their necessary ecological functions in the forest ecosystem, including providing elemental and organic nutrients to the soil, water retention, and habitat for endemic insect species that provide the primary food source for predators (including various species of amphibians and birds, such as cavity nesting woodpeckers).

''(ii) EXCLUSION.—

''(I) IN GENERAL.—Subject to subclause (II), the term 'selection management' does not include an even-age logging operation.

''(II) FELLING AGE; NATIVE BIODIVERSITY.—Subclause (I) does not—

''(aa) establish a 150-year projected felling age as the standard at which individual trees in a stand are to be cut; or

''(bb) limit native biodiversity to that which occurs within the context of a 150-year projected felling age.

''(M) SHELTERWOOD CUT.—The term 'shelterwood cut' means an even-age logging operation that leaves—

''(i) a minority of the stand (larger than a seed-tree cut) as a seed source; or

''(ii) a protection cover remaining standing for any period of time.

''(N) SPECIES DIVERSITY.—The term 'species diversity' means the richness and variety of native species in a particular location.

''(O) STAND.—The term 'stand' means a biological community of trees on land described in subsection (a), comprised of not more than 100 contiguous acres with sufficient identity of 1 or more characteristics (including location, topography, and dominant species) to be managed as a unit.

''(P) TIMBER PURPOSE.—

''(i) IN GENERAL.—The term 'timber purpose' means the use, sale, lease, or distribution of trees, including the felling of trees or portions of trees.

''(ii) EXCEPTION.—The term 'timber purpose' does not include the felling of trees or portions of trees to create land space for a Federal administrative structure.

''(Q) WITHIN-COMMUNITY DIVERSITY.—The term 'within-community diversity' means the distinctive assemblages of species and ecological processes that occur in various physical settings of the biosphere and distinct locations.

''(2) PROHIBITION OF CLEARCUTTING AND OTHER FORMS OF EVEN-AGE LOGGING OPERATIONS.—No clearcutting or other form of even-age logging operation shall be permitted in any stand or watershed.

''(3) MANAGEMENT OF NATIVE BIODIVERSITY.—On each stand on which an even-age logging operation has been conducted on or before the date of enactment of this section, and on each deforested area managed for timber purposes on or before the date of enactment of this section, excluding areas occupied by existing buildings, the Secretary shall—

''(A) prescribe a shift to selection management; or

''(B) cease managing the stand for timber purposes, in which case the Secretary shall—

''(i) undertake an active restoration of the native biodiversity of the stand; or

''(ii) permit the stand to regain native biodiversity.

''(4) ENFORCEMENT.—

''(A) FINDING.— Congress finds that all people of the United States are injured by actions on land to which subsection (g)(3)(B) and this subsection applies.

''(B) PURPOSE.—The purpose of this paragraph is to foster the widest and most effective possible enforcement of subsection (g)(3)(B) and this subsection.

''(C) FEDERAL ENFORCEMENT.—The Secretary of Agriculture, the Secretary of the Interior, and the Attorney General shall enforce subsection (g)(3)(B) and this subsection against any person that violates 1 or more of those provisions.

''(D) CITIZEN SUITS.—

''(i) IN GENERAL.—A citizen harmed by a violation of subsection (g)(3)(B) or this subsection may bring a civil action in United States district court for a declaratory judgment, a temporary restraining order, an injunction, statutory damages, or other remedy against any alleged violator, including the United States.

''(ii) JUDICIAL RELIEF.—If a district court of the United States determines that a violation of subsection (g)(3)(B) or this subsection has occurred, the district court—

''(I) shall impose a damage award of not less than $5,000;

''(II) may issue 1 or more injunctions or other forms of equitable relief; and

''(III) shall award to the plaintiffs reasonable costs of bringing the action, including attorney's fees, witness fees, and other necessary expenses.

''(iii) STANDARD OF PROOF.—The standard of proof in all actions under this subparagraph shall be the preponderance of the evidence.

''(iv) TRIAL.—A trial for any action under this subsection shall be de novo.

''(E) PAYMENT OF DAMAGES.—

''(i) NON-FEDERAL VIOLATOR.—A damage award under subparagraph (D)(ii) shall be paid to the Treasury by a non-Federal violator or violators designated by the court.

''(ii) FEDERAL VIOLATOR.—

''(I) IN GENERAL.—Not later than 40 days after the date on which judgment is rendered, a damage award under subparagraph (D)(ii) for which the United States is determined to be liable shall be paid from the Treasury, as provided under section 1304 of title 31, United States Code, to the person or persons designated to receive the damage award.

''(II) USE OF DAMAGE AWARD.—A damage award described under subclause (I) shall be used by the recipient to protect or restore native biodiversity on Federal land or on land adjoining Federal land.

''(III) COURT COSTS.—Any award of costs of litigation and any award of attorney fees shall be paid by a Federal violator not later than 40 days after the date on which judgment is rendered.

''(F) WAIVER OF SOVEREIGN IMMUNITY.—

''(i) IN GENERAL.—The United States (including agents and employees of the United States) waives its sovereign immunity in all respects in all actions under subsection (g)(3)(B) and this subsection.

''(ii) NOTICE.—No notice is required to enforce this subsection.''.

SEC. 104. CONFORMING AMENDMENTS.

Section 6(g)(3) of the Forest and Rangeland Renewable Resource Planning Act of 1974 (16 U.S.C. 1604(g)(3)) is amended—

(1) in subparagraph (D), by inserting ''and'' after the semicolon at the end;

(2) in subparagraph (E), by striking ''; and'' and inserting a period; and

(3) by striking subparagraph (F).

TITLE II—PROTECTION FOR ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS

SEC. 201. FINDINGS.

Congress finds that—

(1) unfragmented forests on Federal land, unique and valuable assets to the general public, are damaged by extractive logging;

(2) less than 10 percent of the original unlogged forests of the United States remain, and the vast majority of the remnants of the original forests of the United States are located on Federal land;

(3) large, unfragmented forest watersheds provide high-quality water supplies for drinking, agriculture, industry, and fisheries across the United States;

(4) the most recent scientific studies indicate that several thousand species of plants and animals are dependent on large, unfragmented forest areas;

(5) many neotropical migratory songbird species are experiencing documented broad-scale population declines and require large, unfragmented forests to ensure their survival;

(6) destruction of large-scale natural forests has resulted in a tremendous loss of jobs in the fishing, hunting, tourism, recreation, and guiding industries, and has adversely affected sustainable nontimber forest products industries such as the collection of mushrooms and herbs;

(7) extractive logging programs on Federal land are carried out at enormous financial costs to the Treasury and taxpayers of the United States;

(8) Ancient forests continue to be threatened by logging and deforestation and are rapidly disappearing;

(9) Ancient forests help regulate atmospheric balance, maintain biodiversity, and provide valuable scientific opportunity for monitoring the health of the planet;

(10) prohibiting extractive logging in the Ancient forests would create the best conditions for ensuring stable, well distributed, and viable populations of the northern spotted owl, marbled murrelet, American marten, and other vertebrates, invertebrates, vascular plants, and nonvascular plants associated with those forests;

(11) prohibiting extractive logging in the Ancient forests would create the best conditions for ensuring stable, well distributed, and viable populations of anadromous salmonids, resident salmonids, and bull trout;

(12) roadless areas are de facto wilderness that provide wildlife habitat and recreation;

(13) large unfragmented forests, contained in large part on roadless areas on Federal land, are among the last refuges for native animal and plant biodiversity, and are vital to maintaining viable populations of threatened, endangered, sensitive, and rare species;

(14) roads cause soil erosion, disrupt wildlife migration, and allow nonnative species of plants and animals to invade native forests;

(15) the mortality and reproduction patterns of forest dwelling animal populations are adversely affected by traffic-related fatalities that accompany roads;

(16) the exceptional recreational, biological, scientific, or economic assets of certain special forested areas on Federal land are valuable to the public of the United States and are damaged by extractive logging;

(17) in order to gauge the effectiveness and appropriateness of current and future resource management activities, and to continue to broaden and develop our understanding of silvicultural practices, many special forested areas need to remain in a natural, unmanaged state to serve as scientifically established baseline control forests;

(18) certain special forested areas provide habitat for the survival and recovery of endangered and threatened plant and wildlife species, such as grizzly bears, spotted owls, Pacific salmon, and Pacific yew, that are harmed by extractive logging;

(19) many special forested areas on Federal land are considered sacred sites by native peoples; and

(20) as a legacy for the enjoyment, knowledge, and well-being of future generations, provisions must be made for the protection and perpetuation of the Ancient forests, roadless areas, watershed protection areas, and special areas of the United States.

SEC. 202. DEFINITIONS.

In this title:

(1) ANCIENT FOREST.—The term ''Ancient forest'' means—

(A) the northwest Ancient forests, including—

(i) Federal land identified as late-successional reserves, riparian reserves, and key watersheds under the heading ''Alternative 1'' of the report entitled ''Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, Vol. I.'', and dated February 1994; and

(ii) Federal land identified by the term ''medium and large conifer multi-storied, canopied forests'' as defined in the report described in clause (i);

(B) the eastside Cascade Ancient forests, including—

(i) Federal land identified as ''Late-Succession/Old-growth Forest (LS/OG)'' depicted on maps for the Colville National Forest, Fremont National Forest, Malheur National Forest, Ochoco National Forest, Umatilla National Forest, Wallowa-Whitman National Forest, and Winema National Forest in the report entitled ''Interim Protection for Late-Successional Forests, Fisheries, and Watersheds: National Forests East of the Cascade Crest, Oregon, and Washington'', prepared by the Eastside Forests Scientific Society Panel (The Wildlife Society, Technical Review 94–2, August 1994);

(ii) Federal land east of the Cascade crest in the States of Oregon and Washington, defined as ''late successional and old-growth forests'' in the general definition on page 28 of the report described in clause (i); and

(iii) Federal land classified as ''Oregon Aquatic Diversity Areas'', as defined in the report described in clause (i); and

(C) the Sierra Nevada Ancient forests, including—

(i) Federal land identified as ''Areas of Late-Successional Emphasis (ALSE)'' in the report entitled, ''Final Report to Congress: Status of the Sierra Nevada'', prepared by the Sierra Nevada Ecosystem Project (Wildland Resources Center Report #40, University of California, Davis, 1996/97);

(ii) Federal land identified as ''Late-Succession/Old-Growth Forests Rank 3, 4 or 5'' in the report described in clause (i); and

(iii) Federal land identified as ''Potential Aquatic Diversity Management Areas'' on the map on page 1497 of Volume II of the report described in clause (i).

(2) EXTRACTIVE LOGGING.—The term ''extractive logging'' means the felling or removal of any trees from Federal forest land for any purpose.

(3) IMPROVED ROAD.—The term ''improved road'' means any road maintained for travel by standard passenger type vehicles.

(4) ROADLESS AREA.—The term ''roadless area'' means a contiguous parcel of Federal land that is—

(A) devoid of improved roads, except as provided in subparagraph (B); and

(B) composed of—

(i) at least 1,000 acres west of the 100th meridian (with up to ½ mile of improved roads per 1,000 acres);

(ii) at least 1,000 acres east of the 100th meridian (with up to ½ mile of improved roads per 1,000 acres); or

(iii) less than 1,000 acres, but share a border that is not an improved road with a wilderness area, primitive area, or wilderness study area.

(5) SECRETARY.—The term ''Secretary'', with respect to any Federal land in an Ancient forest, roadless area, watershed protection area, or special area, means the head of the Federal agency having jurisdiction over the Federal land.

(6) SPECIAL AREA.—The term ''special area'' means an area of Federal forest land designated under section 3 that may not meet the definition of an Ancient forest, roadless area, or watershed protection area, but that—

(A) possesses outstanding biological, scenic, recreational, or cultural values; and

(B) is exemplary on a regional, national, or international level.

(7) WATERSHED PROTECTION AREA.—The term ''watershed protection area'' means Federal land that extends—

(A) 300 feet from both sides of the active stream channel of any permanently flowing stream or river;

(B) 100 feet from both sides of the active channel of any intermittent, ephemeral, or seasonal stream, or any other nonpermanently flowing drainage feature having a definable channel and evidence of annual scour or deposition of flow-related debris;

(C) 300 feet from the edge of the maximum level of any natural lake or pond; or

(D) 150 feet from the edge of the maximum level of a constructed lake, pond, or reservoir, or a natural or constructed wetland.

SEC. 203. DESIGNATION OF SPECIAL AREAS.

(a) IN GENERAL.—

(1) FINDING.—A special area shall possess at least 1 of the values described in paragraphs (2) through (5).

(2) BIOLOGICAL VALUES.—The biological values of a special area may include the presence of—

(A) threatened species or endangered species of plants or animals;

(B) rare or endangered ecosystems;

(C) key habitats necessary for the recovery of endangered species or threatened species;

(D) recovery or restoration areas of rare or underrepresented forest ecosystems;

(E) migration corridors;

(F) areas of outstanding biodiversity;

(G) old growth forests;

(H) commercial fisheries; and

(I) sources of clean water such as key watersheds.

(3) SCENIC VALUES.—The scenic values of a special area may include the presence of—

(A) unusual geological formations;

(B) designated wild and scenic rivers;

(C) unique biota; and

(D) vistas.

(4) RECREATIONAL VALUES.—The recreational values of a special area may include the presence of—

(A) designated national recreational trails or recreational areas;

(B) areas that are popular for such recreation and sporting activities as—

(i) hunting;

(ii) fishing;

(iii) camping;

(iv) hiking;

(v) aquatic recreation; and

(vi) winter recreation;

(C) Federal land in regions that are underserved in terms of recreation;

(D) land adjacent to designated wilderness areas; and

(E) solitude.

(5) CULTURAL VALUES.—The cultural values of a special area may include the presence of—

(A) sites with Native American religious significance; and

(B) historic or prehistoric archaeological sites eligible for listing on the national historic register.

(b) SIZE VARIATION.—A special area may vary in size to encompass the outstanding biological, scenic, recreational, or cultural value or values to be protected.

(c) DESIGNATION OF SPECIAL AREAS.—There are designated the following special areas, which shall be subject to the management restrictions specified in section 204:

(1) ALABAMA.—

(A) SIPSEY WILDERNESS HEADWATERS.—Certain land in the Bankhead National Forest, Bankhead Ranger District, in Lawrence County, totaling approximately 22,000 acres, located directly north and upstream of the Sipsey Wilderness, and directly south of Forest Road 213.

(B) BRUSHY FORK.—Certain land in the Bankhead National Forest, Bankhead Ranger District, in Lawrence County, totaling approximately 6,200 acres, bounded by Forest Roads 249, 254, and 246 and Alabama Highway 33.

(C) REBECCA MOUNTAIN.—Certain land in the Talladega National Forest, Talladega Ranger District, Talladega County and Clay County, totaling approximately 9,000 acres, comprised of all Talladega National Forest lands south of Forest Roads 621 and 621 B, east of Alabama Highway 48/77 and County

Highway 308, and north of the power transmission line.

(D) AUGUSTA MINE RIDGE.—Certain land in the Talladega National Forest, Shoal Creek Ranger District, Cherokee County and Cleburn County, totaling approximately 6,000 acres, and comprised of all Talladega National Forest land north of the Chief Ladiga Rail Trail.

(E) MAYFIELD CREEK.—Certain land in the Talladega National Forest, Oakmulgee Ranger District, in Rail County, totaling approximately 4,000 acres, and bounded by Forest Roads 731, 723, 718, and 718A.

(F) BEAR BAY.—Certain land in the Conecuh National Forest, Conecuh District, in Covington County, totaling approximately 3,000 acres, bounded by County Road 11, Forest Road 305, County Road 3, and the County Road connecting County Roads 3 and 11.

(2) ALASKA.—

(A) TURNAGAIN ARM.—Certain land in the Chugach National Forest, on the Kenai Peninsula, totaling approximately 100,000 acres, extending from sea level to ridgetop surrounding the inlet of Turnagain Arm, known as ''Turnagain Arm''.

(B) HONKER DIVIDE.—Certain land in the Tongass National Forest, totaling approximately 75,000 acres, located on north central Prince of Wales Island, comprising the Thorne River and Hatchery Creek watersheds, stretching approximately 40 miles northwest from the vicinity of the town of Thorne Bay to the vicinity of the town of Coffman Cove, generally known as the ''Honker Divide''.

(3) ARIZONA: NORTH RIM OF THE GRAND CANYON.—Certain land in the Kaibab National Forest that is included in the Grand Canyon Game Preserve, totaling approximately 500,000 acres, abutting the northern side of the Grand Canyon in the area generally known as the ''North Rim of the Grand Canyon''.

(4) ARKANSAS.—

(A) COW CREEK DRAINAGE, ARKANSAS.—Certain land in the Ouachita National Forest, Mena Ranger District, in Polk County, totaling approximately 7,000 acres, known as ''Cow Creek Drainage, Arkansas'', and bounded approximately—

(i) on the north, by County Road 95;

(ii) on the south, by County Road 157;

(iii) on the east, by County Road 48; and

(iv) on the west, by the Arkansas-Oklahoma border.

(B) LEADER AND BRUSH MOUNTAINS.—Certain land in the Ouachita National Forest, Montgomery County and Polk County, totaling approximately 120,000 acres, known as ''Leader Mountain'' and ''Brush Mountain'', located in the vicinity of the Blaylock Creek Watershed between Long Creek and the South Fork of the Saline River.

(C) POLK CREEK AREA.—Certain land in the Ouachita National Forest, Mena Ranger District, totaling approximately 20,000 acres, bounded by Arkansas Highway 4 and Forest Roads 73 and 43, known as the ''Polk Creek area''.

(D) LOWER BUFFALO RIVER WATERSHED.—Certain land in the Ozark National Forest, Sylamore Ranger District, totaling approximately 6,000 acres, including Forest Service land that has not been designated as a wilderness area before the date of enactment of this Act, located in the watershed of Big Creek southwest of the Leatherwood Wilderness Area, Searcy County and Marion County, and known as the ''Lower Buffalo River Watershed''.

(E) UPPER BUFFALO RIVER WATERSHED.—Certain land in the Ozark National Forest, Buffalo Ranger District, totaling approximately 220,000 acres, comprised of Forest Service that has not been designated as a wilderness area before the date of enactment of this Act, known as the ''Upper Buffalo River Watershed'', located approximately 35 miles from the town of Harrison, Madison County, Newton County, and Searcy County, upstream of the confluence of the Buffalo River and Richland Creek in the watersheds of—

(i) the Buffalo River;

(ii) the various streams comprising the Headwaters of the Buffalo River;

(iii) Richland Creek;

(iv) Little Buffalo Headwaters;

(v) Edgmon Creek;

(vi) Big Creek; and

(vii) Cane Creek.

(5) CALIFORNIA: GIANT SEQUOIA PRESERVE.—Certain land in the Sequoia National Forest and Sierra National Forest, known as the ''Giant Sequoia Preserve'', comprised of 3 discontinuous parcels and approximately 442,425 acres, located in Fresno County, Tulare County, and Kern County, in the Southern Sierra Nevada mountain range, including—

(A) the Kings River Unit (145,600 acres) and nearby Redwood Mountain Unit (11,730 acres), located approximately 25 miles east of the city of Fresno; and

(B) the South Unit (285,095 acres), located approximately 15 miles east of the city of Porterville.

(6) COLORADO: COCHETOPA HILLS.—Certain land in the Gunnison Basin area, known as the ''Cochetopa Hills'', administered by the Gunnison National Forest, Grand Mesa National Forest, Uncompahgre National Forest, and Rio Grand National Forest, totaling approximately 500,000 acres, spanning the continental divide south and east of the city of Gunnison, in Saguache County, and including—

(A) Elk Mountain and West Elk Mountain;

(B) the Grand Mesa;

(C) the Uncompahgre Plateau;

(D) the northern San Juan Mountains;

(E) the La Garitas Mountains; and

(F) the Cochetopa Hills.

(7) GEORGIA.—

(A) ARMUCHEE CLUSTER.—Certain land in the Chattahoochee National Forest, Armuchee Ranger District, known as the ''Armuchee Cluster'', totaling approximately 19,700 acres, comprised of 3 parcels known as ''Rocky Face'', ''Johns Mountain'', and ''Hidden Creek'', located approximately 10 miles southwest of Dalton and 14 miles north of Rome, in Whitfield County, Walker County, Chattooga County, Floyd County, and Gordon County.

(B) BLUE RIDGE CORRIDOR CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Chestatee Ranger District, totaling approximately 15,000 acres, known as the ''Blue Ridge Corridor Cluster, Georgia Areas'', comprised of 5 parcels known as ''Horse Gap'', ''Hogback Mountain'', ''Blackwell Creek'', ''Little Cedar Mountain'', and ''Black Mountain'', located approximately 15 to 20 miles north of the town of Dahlonega, in Union County and Lumpkin County.

(C) CHATTOOGA WATERSHED CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Tallulah Ranger District, totaling 63,500 acres, known as the ''Chattooga Watershed Cluster, Georgia Areas'', comprised of 7 areas known as ''Rabun Bald'', ''Three Forks'', ''Ellicott Rock Extension'', ''Rock Gorge'', ''Big Shoals'', ''Thrift's Ferry'', and ''Five Falls'', in Rabun County, near the towns of Clayton, Georgia, and Dillard, South Carolina.

(D) COHUTTA CLUSTER.—Certain land in the Chattahoochee National Forest, Cohutta Ranger District, totaling approximately 28,000 acres, known as the ''Cohutta Cluster'', comprised of 4 parcels known as ''Cohutta Extensions'', ''Grassy Mountain'', ''Emery Creek'', and ''Mountaintown'', near the towns of Chatsworth and Ellijay, in Murray County, Fannin County, and Gilmer County.

(E) DUNCAN RIDGE CLUSTER.—Certain land in the Chattahoochee National Forest, Brasstown and Toccoa Ranger Districts, totaling approximately 17,000 acres, known as the ''Duncan Ridge Cluster'', comprised of the parcels known as ''Licklog Mountain'', ''Duncan Ridge'', ''Board Camp'', and ''Cooper Creek Scenic Area Extension'', approximately 10 to 15 miles south of the town of Blairsville, in Union County and Fannin County.

(F) ED JENKINS NATIONAL RECREATION AREA CLUSTER.—Certain land in the Chattahoochee National Forest, Toccoa and Chestatee Ranger Districts, totaling approximately 19,300 acres, known as the ''Ed Jenkins National Recreation Area Cluster'', comprised of the Springer Mountain, Mill Creek, and Toonowee parcels, 30 miles north of the town of Dahlonega, in Fannin County, Dawson County, and Lumpkin County.

(G) GAINESVILLE RIDGES CLUSTER.—Certain land in the Chattahoochee National Forest, Chattooga Ranger District, totaling approximately 14,200 acres, known as the ''Gainesville Ridges Cluster'', comprised of 3 parcels known as ''Panther Creek'', ''Tugaloo Uplands'', and ''Middle Fork Broad River'', approximately 10 miles from the town of Toccoa, in Habersham County and Stephens County.

(H) NORTHERN BLUE RIDGE CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Brasstown and Tallulah Ranger Districts, totaling approximately 46,000 acres, known as the ''Northern Blue Ridge Cluster, Georgia Areas'', comprised of 8 areas known as ''Andrews Cove'', ''Anna Ruby Falls Scenic Area Extension'', ''High Shoals'', ''Tray Mountain Extension'', ''Kelly Ridge-Moccasin Creek'', ''Buzzard Knob'', ''Southern Nantahala Extension'', and ''Patterson Gap'', approximately 5 to 15 miles north of Helen, 5 to 15 miles southeast of Hiawassee, north of Clayton, and west of Dillard, in White County, Towns County, and Rabun County.

(I) RICH MOUNTAIN CLUSTER.—Certain land in the Chattahoochee National Forest, Toccoa Ranger District, totaling approximately 9,500 acres, known as the ''Rich Mountain Cluster'', comprised of the parcels known as ''Rich Mountain Extension'' and ''Rocky Mountain'', located 10 to 15 miles northeast of the town of Ellijay, in Gilmer County and Fannin County.

(J) WILDERNESS HEARTLANDS CLUSTER, GEORGIA AREAS.—Certain land in the Chattahoochee National Forest, Chestatee, Brasstown and Chattooga Ranger Districts, totaling approximately 16,500 acres, known as the ''Wilderness Heartlands Cluster, Georgia Areas'', comprised of 4 parcels known as the ''Blood Mountain Extensions'', ''Raven Cliffs Extensions'', ''Mark Trail Extensions'', and ''Brasstown Extensions'', near the towns of Dahlonega, Cleveland, Helen, and Blairsville, in Lumpkin County, Union County, White County, and Towns County.

(8) IDAHO.—

(A) COVE/MALLARD.—Certain land in the Nez Perce National Forest, totaling approximately 94,000 acres, located approximately 30 miles southwest of the town of Elk City, and west of the town of Dixie, in the area generally known as ''Cove/Mallard''.

(B) MEADOW CREEK.—Certain land in the Nez Perce National Forest, totaling approximately 180,000 acres, located approximately 8 miles east of the town of Elk City in the area generally known as ''Meadow Creek''.

(C) FRENCH CREEK/PATRICK BUTTE.—Certain land in the Payette National Forest, totaling

approximately 141,000 acres, located approximately 20 miles north of the town of McCall in the area generally known as ''French Creek/Patrick Butte''.

(9) ILLINOIS.—

(A) CRIPPS BEND.—Certain land in the Shawnee National Forest, totaling approximately 39 acres, located in Jackson County in the Big Muddy River watershed, in the area generally known as ''Cripps Bend''.

(B) OPPORTUNITY AREA 6.—Certain land in the Shawnee National Forest, totaling approximately 50,000 acres, located in northern Pope County surrounding Bell Smith Springs Natural Area, in the area generally known as ''Opportunity Area 6''.

(C) QUARREL CREEK.—Certain land in the Shawnee National Forest, totaling approximately 490 acres, located in northern Pope County in the Quarrel Creek watershed, in the area generally known as ''Quarrel Creek''.

(10) MICHIGAN: TRAP HILLS.—Certain land in the Ottawa National Forest, Bergland Ranger District, totaling approximately 37,120 acres, known as the ''Trap Hills'', located approximately 5 miles from the town of Bergland, in Ontonagon County.

(11) MINNESOTA.—

(A) TROUT LAKE AND SUOMI HILLS.—Certain land in the Chippewa National Forest, totaling approximately 12,000 acres, known as ''Trout Lake/Suomi Hills'' in Itasca County.

(B) LULLABY WHITE PINE RESERVE.—Certain land in the Superior National Forest, Gunflint Ranger District, totaling approximately 2,518 acres, in the South Brule Opportunity Area, northwest of Grand Marais in Cook County, known as the ''Lullaby White Pine Reserve''.

(12) MISSOURI: ELEVEN POINT-BIG SPRINGS AREA.—Certain land in the Mark Twain National Forest, Eleven Point Ranger District, totaling approximately 200,000 acres, comprised of the administrative area of the Eleven Point Ranger District, known as the ''Eleven Point-Big Springs Area''.

(13) MONTANA: MOUNT BUSHNELL.—Certain land in the Lolo National Forest, totaling approximately 41,000 acres, located approximately 5 miles southwest of the town of Thompson Falls in the area generally known as ''Mount Bushnell''.

(14) NEW MEXICO.—

(A) ANGOSTURA.—Certain land in the eastern half of the Carson National Forest, Camino Real Ranger District, totaling approximately 10,000 acres, located in Township 21, Ranges 12 and 13, known as ''Angostura'', and bounded—

(i) on the northeast, by Highway 518;

(ii) on the southeast, by the Angostura Creek watershed boundary;

(iii) on the southern side, by Trail 19 and the Pecos Wilderness; and

(iv) on the west, by the Agua Piedra Creek watershed.

(B) LA MANGA.—Certain land in the western half of the Carson National Forest, El Rito Ranger District, at the Vallecitos Sustained Yield Unit, totaling approximately 5,400 acres, known as ''La Manga'', in Township 27, Range 6, and bounded—

(i) on the north, by the Tierra Amarilla Land Grant;

(ii) on the south, by Canada Escondida;

(iii) on the west, by the Sustained Yield Unit boundary and the Tierra Amarilla Land Grant; and

(iv) on the east, by the Rio Vallecitos.

(C) ELK MOUNTAIN.—Certain land in the Santa Fe National Forest, totaling approximately 7,220 acres, known as ''Elk Mountain'' located in Townships 17 and 18 and Ranges 12 and 13, and bounded—

(i) on the north, by the Pecos Wilderness;

(ii) on the east, by the Cow Creek Watershed;

(iii) on the west, by the Cow Creek; and

(iv) on the south, by Rito de la Osha.

(D) JEMEZ HIGHLANDS.—Certain land in the Jemez Ranger District of the Santa Fe National Forest, totaling approximately 54,400 acres, known as the ''Jemez Highlands'', located primarily in Sandoval County.

(15) NORTH CAROLINA.—

(A) CENTRAL NANTAHALA CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Nantahala National Forest, Tusquitee, Cheoah, and Wayah Ranger Districts, totaling approximately 107,000 acres, known as the ''Central Nantahala Cluster, North Carolina Areas'', comprised of 9 parcels known as ''Tusquitee Bald'', ''Shooting Creek Bald'', ''Cheoah Bald'', ''Piercy Bald'', ''Wesser Bald'', ''Tellico Bald'', ''Split White Oak'', ''Siler Bald'', and ''Southern Nantahala Extensions'', near the towns of Murphy, Franklin, Bryson City, Andrews, and Beechertown, in Cherokee County, Macon County, Clay County, and Swain County.

(B) CHATTOOGA WATERSHED CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Nantahala National Forest, Highlands Ranger District, totaling approximately 8,000 acres, known as the ''Chattooga Watershed Cluster, North Carolina Areas'', comprised of the Overflow (Blue Valley) and Terrapin Mountain parcels, 5 miles from the town of Highlands, in Macon County and Jackson County.

(C) TENNESSEE BORDER CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Nantahala National Forest, Tusquitee and Cheoah Ranger Districts, totaling approximately 28,000 acres, known as the ''Tennessee Border Cluster, North Carolina Areas'', comprised of the 4 parcels known as the ''Unicoi Mountains'', ''Deaden Tree'', ''Snowbird'', and ''Joyce Kilmer-Slickrock Extension'', near the towns of Murphy and Robbinsville, in Cherokee County and Graham County.

(D) BALD MOUNTAINS.—Certain land in the Pisgah National Forest, French Broad Ranger District, totaling approximately 13,000 acres known as the ''Bald Mountains'', located 12 miles northeast of the town of Hot Springs, in Madison County.

(E) BIG IVY TRACT.—Certain land in the Pisgah National Forest, totaling approximately 14,000 acres, located approximately 15 miles west of Mount Mitchell in the area generally known as the ''Big Ivy Tract''.

(F) BLACK MOUNTAINS CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Pisgah National Forest, Toecane and Grandfather Ranger Districts, totaling approximately 62,000 acres, known as the ''Black Mountains Cluster, North Carolina Areas'', comprised of 5 parcels known as ''Craggy Mountains'', ''Black Mountains'', ''Jarrett Creek'', ''Mackey Mountain'', and ''Woods Mountain'', near the towns of Burnsville, Montreat and Marion, in Buncombe County, Yancey County, and McDowell County.

(G) LINVILLE CLUSTER.—Certain land in the Pisgah National Forest, Grandfather District, totaling approximately 42,000 acres, known as the ''Linville Cluster'', comprised of 7 parcels known as ''Dobson Knob'', ''Linville Gorge Extension'', ''Steels Creek'', ''Sugar Knob'', ''Harper Creek'', ''Lost Cove'', and ''Upper Wilson Creek'', near the towns of Marion, Morgantown, Spruce Pine, Linville, and Blowing Rock, in Burke County, McDowell County, Avery County, and Caldwell County.

(H) NOLICHUCKY, NORTH CAROLINA AREA.—Certain land in the Pisgah National Forest, Toecane Ranger District, totaling approximately 4,000 acres, known as the ''Nolichucky, North Carolina Area'', located 25 miles northwest of Burnsville, in Mitchell County and Yancey County.

(I) PISGAH CLUSTER, NORTH CAROLINA AREAS.—Certain land in the Pisgah National Forest, Pisgah Ranger District, totaling approximately 52,000 acres, known as the ''Pisgah Cluster, North Carolina Areas'', comprised of 5 parcels known as ''Shining Rock and Middle Prong Extensions'', ''Daniel Ridge'', ''Cedar Rock Mountain'', ''South Mills River'', and ''Laurel Mountain'', 5 to 12 miles north of the town of Brevard and southwest of the city of Asheville, in Haywood County, Transylvania County, and Henderson County.

(J) WILDCAT.—Certain land in the Pisgah National Forest, French Broad Ranger District, totaling approximately 6,500 acres, known as ''Wildcat'', located 20 miles northwest of the town of Canton, in Haywood County.

(16) OHIO.—

(A) ARCHERS FORK COMPLEX.—Certain land in the Marietta Unit of the Athens Ranger District, in the Wayne National Forest, in Washington County, known as ''Archers Fork Complex'', totaling approximately 18,350 acres, located northeast of Newport and bounded—

(i) on the northwest, by State Highway 26;

(ii) on the northeast, by State Highway 260;

(iii) on the southeast, by the Ohio River; and

(iv) on the southwest, by Bear Run and Danas Creek.

(B) BLUEGRASS RIDGE.—Certain land in the Ironton Ranger District on the Wayne National Forest, in Lawrence County, known as ''Bluegrass Ridge'', totaling approximately 4,000 acres, located 3 miles east of Etna in Township 4 North, Range 17 West, Sections 19 through 23 and 27 through 30.

(C) BUFFALO CREEK.—Certain land in the Ironton Ranger District of the Wayne National Forest, Lawrence County, Ohio, known as ''Buffalo Creek'', totaling approximately 6500 acres, located 4 miles northwest of Waterloo in Township 5 North, Ranger 17 West, sections 3 through 10 and 15 through 18.

(D) LAKE VESUVIUS.—Certain land in the Ironton Ranger District of the Wayne National Forest, in Lawrence County, totaling approximately 4,900 acres, generally known as ''Lake Vesuvius'', located to the east of Etna in Township 2 North, Range 18 West, and bounded—

(i) on the southwest, by State Highway 93; and

(ii) on the northwest, by State Highway 4.

(E) MORGAN SISTERS.—Certain land in the Ironton Ranger District of the Wayne National Forest, in Lawrence County, known as ''Morgan Sisters'', totaling approximately 2,500 acres, located 1 mile east of Gallia and bounded by State Highway 233 in Township 6 North, Range 17 West, sections 13, 14, 23 and 24 and Township 5 North, Range 16 West, sections 18 and 19.

(F) UTAH RIDGE.—Certain land in the Athens Ranger District of the Wayne National Forest, in Athens County, known as ''Utah Ridge'', totaling approximately 9,000 acres, located 1 mile northwest of Chauncey and bounded—

(i) on the southeast, by State Highway 682 and State Highway 13;

(ii) on the southwest, by US Highway 33 and State Highway 216; and

(iii) on the north, by State Highway 665.

(G) WILDCAT HOLLOW.—Certain land in the Athens Ranger District of the Wayne National Forest, in Perry County and Morgan County, known as ''Wildcat Hollow'', totaling approximately 4,500 acres, located 1 mile east of Corning in Township 12 North, Range 14 West, sections 1, 2, 11–14, 23 and 24 and Township 8 North, Range 13 West, sections 7, 18, and 19.

(17) OKLAHOMA: COW CREEK DRAINAGE, OKLAHOMA.—Certain land in the Ouachita National Forest, Mena Ranger District, in Le Flore County, totaling approximately 3,000 acres, known as ''Cow Creek Drainage, Oklahoma'', and bounded approximately—

(A) on the west, by the Beech Creek National Scenic Area;

(B) on the north, by State Highway 63;

(C) on the east, by the Arkansas-Oklahoma border; and

(D) on the south, by County Road 9038 on the south.

(18) OREGON: APPLEGATE WILDERNESS.—Certain land in the Siskiyou National Forest and Rogue River National Forest, totaling approximately 20,000 acres, approximately 20 miles southwest of the town of Grants Pass and 10 miles south of the town of Williams, in the area generally known as the ''Applegate Wilderness''.

(19) PENNSYLVANIA.—

(A) THE BEAR CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Elk County, totaling approximately 7,800 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by Forest Service Road 136;

(ii) on the north, by Forest Service Roads 339 and 237;

(iii) on the east, by Forest Service Road 143; and

(iv) on the south, by Forest Service Road 135.

(B) THE BOGUS ROCKS SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 1,015 acres, and comprised of Allegheny National Forest land in compartment 714 bounded—

(i) on the northeast and east, by State Route 948;

(ii) on the south, by State Route 66;

(iii) 0n the southwest and west, by Township Road 370;

(iv) on the northwest, by Forest Service Road 632; and

(v) on the north, by a pipeline.

(C) THE CHAPPEL FORK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 10,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the south and southeast, by State Road 321;

(ii) on the south, by Chappel Bay;

(iii) on the west, by the Allegheny Reservoir;

(iv) on the north, by State Route 59; and

(v) on the east, by private land.

(D) THE FOOLS CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 1,500 acres, and comprised of Allegheny National Forest land south and west of Forest Service Road 255 and west of FR 255A, bounded—

(i) on the west, by Minister Road; and

(ii) on the south, by private land.

(E) THE HICKORY CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totaling approximately 2,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the east and northeast, by Heart's Content Road;

(ii) on the south, by Hickory Creek Wilderness Area;

(iii) on the northwest, by private land; and

(iv) on the north, by Allegheny Front National Recreation Area.

(F) THE LAMENTATION RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 4,500 acres, and—

(i) comprised of Allegheny National Forest land bounded—

(I) on the north, by Tionesta Creek;

(II) on the east, by Salmon Creek;

(III) on the southeast and southwest, by private land; and

(IV) on the south, by Forest Service Road 210; and

(ii) including the lower reaches of Bear Creek.

(G) THE LEWIS RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 500 acres, and comprised of Allegheny National Forest land north and east of Forest Service Road 312.3, including land known as the ''Lewis Run Natural Area'' and consisting of land within Compartment 466, Stands 1–3, 5–8, 10–14, and 18–27.

(H) THE MILL CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Elk County, totaling approximately 2,000 acres, and comprised of Allegheny National Forest land within a 1-mile radius of the confluence of Red Mill Run and Big Mill Creek and known as the ''Mill Creek Natural Area''.

(I) THE MILLSTONE CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 30,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 66;

(ii) on the northeast, by Forest Service Road 226;

(iii) on the east, by Forest Service Roads 130, 774, and 228;

(iv) on the southeast, by State Road 3002 and Forest Service Road 189;

(v) on the south, by the Clarion River; and

(vi) on the southwest, west, and northwest, by private land.

(J) THE MINISTER CREEK SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, Warren County, totalling approximately 6,600 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by a snowmobile trail;

(ii) on the east, by Minister Road;

(iii) on the south, by State Route 666 and private land;

(iv) on the southwest, by Forest Service Road 420; and

(v) on the west, by warrants 3109 and 3014.

(K) THE MUZETTE SPECIAL AREA.—Certain land in the Allegheny National Forest, Marienville Ranger District, Forest County, totaling approximately 325 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by 79°16′ longitude, approximately;

(ii) on the north, by Forest Service Road 561;

(iii) on the east, by Forest Service Road 212; and

(iv) on the south, by private land.

(L) THE SUGAR RUN SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford Ranger District, McKean County, totaling approximately 8,800 acres, and comprised of Allegheny National Forest land bounded—

(i) on the north, by State Route 346 and private land;

(ii) on the east, by Forest Service Road 137; and

(iii) on the south and west, by State Route 321.

(M) THE TIONESTA SPECIAL AREA.—Certain land in the Allegheny National Forest, Bradford and Marienville Ranger Districts, Elk, Forest, McKean, and Warren Counties, totalling approximately 27,000 acres, and comprised of Allegheny National Forest land bounded—

(i) on the west, by private land and State Route 948;

(ii) on the northwest, by Forest Service Road 258;

(iii) on the north, by Hoffman Farm Recreation Area and Forest Service Road 486;

(iv) on the northeast, by private land and State Route 6;

(v) on the east, by private land south to Forest Road 133, then by snowmobile trail from Forest Road 133 to Windy City, then by private land and Forest Road 327 to Russell City; and

(vi) on the southwest, by State Routes 66 and 948.

(20) SOUTH CAROLINA.—

(A) BIG SHOALS, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as ''Big Shoals, South Carolina Area'', 15 miles south of Highlands, North Carolina.

(B) BRASSTOWN CREEK, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 3,500 acres, known as ''Brasstown Creek, South Carolina Area'', approximately 15 miles west of Westminster, South Carolina.

(C) CHAUGA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 16,000 acres, known as ''Chauga'', approximately 10 miles west of Walhalla, South Carolina.

(D) DARK BOTTOMS.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 4,000 acres, known as ''Dark Bottoms'', approximately 10 miles northwest of Westminster, South Carolina.

(E) ELLICOTT ROCK EXTENSION, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as ''Ellicott Rock Extension, South Carolina Area'', located approximately 10 miles south of Cashiers, North Carolina.

(F) FIVE FALLS, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 3,500 acres, known as ''Five Falls, South Carolina Area'', approximately 10 miles southeast of Clayton, Georgia.

(G) PERSIMMON MOUNTAIN.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 7,000 acres, known as ''Persimmon Mountain'', approximately 12 miles south of Cashiers, North Carolina.

(H) ROCK GORGE, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 2,000 acres, known as ''Rock Gorge, South Carolina Area'', 12 miles southeast of Highlands, North Carolina.

(I) TAMASSEE.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 5,500 acres, known as ''Tamassee'', approximately 10 miles north of Walhalla, South Carolina.

(J) THRIFT'S FERRY, SOUTH CAROLINA AREA.—Certain land in the Sumter National Forest, Andrew Pickens Ranger District, in Oconee County, totaling approximately 5,000 acres, known as ''Thrift's Ferry, South Carolina Area'', 10 miles east of Clayton, Georgia.

(21) SOUTH DAKOTA.—

(A) BLACK FOX AREA.—Certain land in the Black Hills National Forest, totaling approximately 12,400 acres, located in the upper

reaches of the Rapid Creek watershed, known as the ''Black Fox Area'', and roughly bounded—

(i) on the north, by FDR 206;

(ii) on the south, by the steep slopes north of Forest Road 231; and

(iii) on the west, by a fork of Rapid Creek.

(B) BREAKNECK AREA.—Certain land in the Black Hills National Forest, totaling 6,700 acres, located along the northeast edge of the Black Hills in the vicinity of the Black Hills National Cemetery and the Bureau of Land Management's Fort Meade Recreation Area, known as the ''Breakneck Area'', and generally—

(i) bounded by Forest Roads 139 and 169 on the north, west, and south; and

(ii) demarcated along the eastern and western boundaries by the ridge-crests dividing the watershed.

(C) NORBECK PRESERVE.—Certain land in the Black Hills National Forest, totaling approximately 27,766 acres, known as the ''Norbeck Preserve'', and encompassed approximately by a boundary that, starting at the southeast corner—

(i) runs north along FDR 753 and United States Highway Alt. 16, then along SD 244 to the junction of Palmer Creek Road, which serves generally as a northwest limit;

(ii) heads south from the junction of Highways 87 and 89;

(iii) runs southeast along Highway 87; and

(iv) runs east back to FDR 753, excluding a corridor of private land along FDR 345.

(D) PILGER MOUNTAIN AREA.—Certain land in the Black Hills National Forest, totaling approximately 12,600 acres, known as the ''Pilger Mountain Area'', located in the Elk Mountains on the southwest edge of the Black Hills, and roughly bounded—

(i) on the east and northeast, by Forest Roads 318 and 319;

(ii) on the north and northwest, by Road 312; and

(iii) on the southwest, by private land.

(E) STAGEBARN CANYONS.—Certain land in the Black Hills National Forest, known as ''Stagebarn Canyons'', totaling approximately 7,300 acres, approximately 10 miles west of Rapid City, South Dakota.

(22) TENNESSEE.—

(A) BALD MOUNTAINS CLUSTER, TENNESSEE AREAS.—Certain land in the Nolichucky and Unaka Ranger Districts of the Cherokee National Forest, in Cocke County, Green County, Washington County, and Unicoi County, totaling approximately 46,133 acres, known as the ''Bald Mountains Cluster, Tennessee Areas'', and comprised of 10 parcels known as ''Laurel Hollow Mountain'', ''Devil's Backbone'', ''Laurel Mountain'', ''Walnut Mountain'', ''Wolf Creek'', ''Meadow Creek Mountain'', ''Brush Creek Mountain'', ''Paint Creek'', ''Bald Mountain'', and ''Sampson Mountain Extension'', located near the towns of Newport, Hot Springs, Greeneville, and Erwin.

(B) BIG FROG/COHUTTA CLUSTER.—Certain land in the Cherokee National Forest, in Polk County, Ocoee Ranger District, Hiwassee Ranger District, and Tennessee Ranger District, totaling approximately 28,800 acres, known as the ''Big Frog/Cohutta Cluster'', comprised of 4 parcels known as ''Big Frog Extensions'', ''Little Frog Extensions'', ''Smith Mountain'', and ''Rock Creek'', located near the towns of Copperhill, Ducktown, Turtletown, and Benton.

(C) CITICO CREEK WATERSHED CLUSTER TENNESSEE AREAS.—Certain land in the Tellico Ranger District of the Cherokee National Forest, in Monroe County, totaling approximately 14,256 acres, known as the ''Citico Creek Watershed Cluster, Tennessee Areas'', comprised of 4 parcels known as ''Flats Mountain'', ''Miller Ridge'', ''Cowcamp Ridge'', and ''Joyce Kilmer-Slickrock Extension'', near the town of Tellico Plains.

(D) IRON MOUNTAINS CLUSTER.—Certain land in the Cherokee National Forest, Watauga Ranger District, totaling approximately 58,090 acres, known as the ''Iron Mountains Cluster'', comprised of 8 parcels known as ''Big Laurel Branch Addition'', ''Hickory Flat Branch'', ''Flint Mill'', ''Lower Iron Mountain'', ''Upper Iron Mountain'', ''London Bridge'', ''Beaverdam Creek'', and ''Rodgers Ridge'', located near the towns of Bristol and Elizabethton, in Sullivan County and Johnson County.

(E) NORTHERN UNICOI MOUNTAINS CLUSTER.—Certain land in the Tellico Ranger District of the Cherokee National Forest, in Monroe County, totaling approximately 30,453 acres, known as the ''Northern Unicoi Mountain Cluster'', comprised of 4 parcels known as ''Bald River Gorge Extension'', ''Upper Bald River'', ''Sycamore Creek'', and ''Brushy Ridge'', near the town of Tellico Plains.

(F) ROAN MOUNTAIN CLUSTER.—Certain land in the Cherokee National Forest, Unaka and Watauga Ranger Districts, totaling approximately 23,725 acres known as the ''Roan Mountain Cluster'', comprised of 7 parcels known as ''Strawberry Mountain'', ''Highlands of Roan'', ''Ripshin Ridge'', ''Doe River Gorge Scenic Area'', ''White Rocks Mountain'', ''Slide Hollow'' and ''Watauga Reserve'', approximately 8 to 20 miles south of the town of Elizabethton, in Unicoi County, Carter County, and Johnson County.

(G) SOUTHERN UNICOI MOUNTAINS CLUSTER.—Certain land in the Hiwassee Ranger District of the Cherokee National Forest, in Polk County, Monroe County, and McMinn County, totaling approximately 11,251 acres, known as the ''Southern Unicoi Mountains Cluster'', comprised of 3 parcels known as ''Gee Creek Extension'', ''Coker Creek'', and ''Buck Bald'', near the towns of Etowah, Benton, and Turtletown.

(H) UNAKA MOUNTAINS CLUSTER, TENNESSEE AREAS.—Certain land in the Cherokee National Forest, Unaka Ranger District, totaling approximately 15,669 acres, known as the ''Unaka Mountains Cluster, Tennessee Areas'', comprised of 3 parcels known as ''Nolichucky'', ''Unaka Mountain Extension'', and ''Stone Mountain'', approximately 8 miles from Erwin, in Unicoi County and Carter County.

(23) TEXAS: LONGLEAF RIDGE.—Certain land in the Angelina National Forest, in Jasper County and Angelina County, totaling approximately 30,000 acres, generally known as ''Longleaf Ridge'', and bounded—

(A) on the west, by Upland Island Wilderness Area;

(B) on the south, by the Neches River; and

(C) on the northeast, by Sam Rayburn Reservoir.

(24) VERMONT.—

(A) GLASTENBURY AREA.—Certain land in the Green Mountain National Forest, totaling approximately 35,000 acres, located 3 miles northeast of Bennington, generally known as the ''Glastenbury Area'', and bounded—

(i) on the north, by Kelly Stand Road;

(ii) on the east, by Forest Road 71;

(iii) on the south, by Route 9; and

(iv) on the west, by Route 7.

(B) LAMB BROOK.—Certain land in the Green Mountain National Forest, totaling approximately 5,500 acres, located 3 miles southwest of Wilmington, generally known as ''Lamb Brook'', and bounded—

(i) on the west, by Route 8;

(ii) on the south, by Route 100;

(iii) on the north, by Route 9; and

(iv) on the east, by land owned by New England Power Company.

(C) ROBERT FROST MOUNTAIN AREA.—Certain land in the Green Mountain National Forest, totaling approximately 8,500 acres, known as ''Robert Frost Mountain Area'', located northeast of Middlebury, consisting of the Forest Service land bounded—

(i) on the west, by Route 116;

(ii) on the north, by Bristol Notch Road;

(iii) on the east, by Lincoln/Ripton Road; and

(iv) on the south, by Route 125.

(25) VIRGINIA.—

(A) BEAR CREEK.—Certain land in the Jefferson National Forest, Wythe Ranger District, known as ''Bear Creek'', north of Rural Retreat, in Smyth County and Wythe County.

(B) CAVE SPRINGS.—Certain land in the Jefferson National Forest, Clinch Ranger District, totaling approximately 3,000 acres, known as ''Cave Springs'', between State Route 621 and the North Fork of the Powell River, in Lee County.

(C) DISMAL CREEK.—Certain land totaling approximately 6,000 acres, in the Jefferson National Forest, Blacksburg Ranger District, known as ''Dismal Creek'', north of State Route 42, in Giles County and Bland County.

(D) STONE COAL CREEK.—Certain land in the Jefferson National Forest, New Castle Ranger District, totaling approximately 2,000 acres, known as ''Stone Coal Creek'', in Craig County and Botetourt County.

(E) WHITE OAK RIDGE: TERRAPIN MOUNTAIN.—Certain land in the Glenwood Ranger District of the Jefferson National Forest, known as ''White Oak Ridge—Terrapin Mountain'', totaling approximately 8,000 acres, east of the Blue Ridge Parkway, in Botetourt County and Rockbridge County.

(F) WHITETOP MOUNTAIN.—Certain land in the Jefferson National Forest, Mt. Rodgers Recreation Area, totaling 3,500 acres, known as ''Whitetop Mountain'', in Washington County, Smyth County, and Grayson County.

(G) WILSON MOUNTAIN.—Certain land known as ''Wilson Mountain'', in the Jefferson National Forest, Glenwood Ranger District, totaling approximately 5,100 acres, east of Interstate 81, in Botetourt County and Rockbridge County.

(H) FEATHERCAMP.—Certain land in the Mt. Rodgers Recreation Area of the Jefferson National Forest, totaling 4,974 acres, known as ''Feathercamp'', located northeast of the town of Damascus and north of State Route 58 on the Feathercamp ridge, in Washington County.

(26) WISCONSIN.—

(A) FLYNN LAKE.—Certain land in the Chequamegon-Nicolet National Forest, Washburn Ranger District, totaling approximately 5,700 acres, known as ''Flynn Lake'', in the Flynn Lake semi-primitive nonmotorized area, in Bayfield County.

(B) GHOST LAKE CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Great Divide Ranger District, totaling approximately 6,000 acres, known as ''Ghost Lake Cluster'', including 5 parcels known as ''Ghost Lake'', ''Perch Lake'', ''Lower Teal River'', ''Foo Lake'', and ''Bulldog Springs'', in Sawyer County.

(C) LAKE OWENS CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Great Divide and Washburn Ranger Districts, totaling approximately 3,600 acres, known as ''Lake Owens Cluster'', comprised of parcels known as ''Lake Owens'', ''Eighteenmile Creek'', ''Northeast Lake'', and ''Sugarbush Lake'', in Bayfield County.

(D) MEDFORD CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District, totaling approximately 23,000 acres, known as the ''Medford Cluster'', comprised of 12 parcels known as ''County E Hardwoods'', ''Silver Creek/Mondeaux River Bottoms'', ''Lost Lake

Esker'', ''North and South Fork Yellow Rivers'', ''Bear Creek'', ''Brush Creek'', ''Chequamegon Waters'', ''John's and Joseph Creeks'', ''Hay Creek Pine-Flatwoods'', ''558 Hardwoods'', ''Richter Lake'', and ''Lower Yellow River'', in Taylor County.

(E) PARK FALLS CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District, totaling approximately 23,000 acres, known as ''Park Falls Cluster'', comprised of 11 parcels known as ''Sixteen Lakes'', ''Chippewa Trail'', ''Tucker and Amik Lakes'', ''Lower Rice Creek'', ''Doering Tract'', ''Foulds Creek'', ''Bootjack Conifers'', ''Pond'', ''Mud and Riley Lake Peatlands'', ''Little Willow Drumlin'', and ''Elk River'', in Price County and Vilas County.

(F) PENOKEE MOUNTAIN CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Great Divide Ranger District, totaling approximately 23,000 acres, known as ''Penokee Mountain Cluster'', comprised of—

(i) the Marengo River and Brunsweiler River semi-primitive nonmotorized areas; and

(ii) parcels known as ''St. Peters Dome'', ''Brunsweiler River Gorge'', ''Lake Three'', ''Hell Hole Creek'', and ''North Country Trail Hardwoods'', in Ashland County and Bayfield County.

(G) SOUTHEAST GREAT DIVIDE CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Medford Park Falls Ranger District, totaling approximately 25,000 acres, known as the ''Southeast Great Divide Cluster'', comprised of parcels known as ''Snoose Lake'', ''Cub Lake'', ''Springbrook Hardwoods'', ''Upper Moose River'', ''East Fork Chippewa River'', ''Upper Torch River'', ''Venison Creek'', ''Upper Brunet River'', ''Bear Lake Slough'', and ''Noname Lake'', in Ashland County and Sawyer County.

(H) DIAMOND ROOF CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Lakewood-Laona Ranger District, totaling approximately 6,000 acres, known as ''Diamond Roof Cluster'', comprised of 4 parcels known as ''McCaslin Creek'', ''Ada Lake'', ''Section 10 Lake'', and ''Diamond Roof'', in Forest County, Langlade County, and Oconto County.

(I) ARGONNE FOREST CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District, totaling approximately 12,000 acres, known as ''Argonne Forest Cluster'', comprised of parcels known as ''Argonne Experimental Forest'', ''Scott Creek'', ''Atkins Lake'', and ''Island Swamp'', in Forest County.

(J) BONITA GRADE.—Certain land in the Chequamegon-Nicolet National Forest, Lakewood-Laona Ranger District, totaling approximately 1,200 acres, known as ''Bonita Grade'', comprised of parcels known as ''Mountain Lakes'', ''Temple Lake'', ''Second South Branch'', ''First South Branch'', and ''South Branch Oconto River'', in Langlade County.

(K) FRANKLIN AND BUTTERNUT LAKES CLUSTER.—Certain land in the Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District, totaling approximately 12,000 acres, known as ''Franklin and Butternut Lakes Cluster'', comprised of 8 parcels known as ''Bose Lake Hemlocks'', ''Luna White Deer'', ''Echo Lake'', ''Franklin and Butternut Lakes'', ''Wolf Lake'', ''Upper Ninemile'', ''Meadow'', and ''Bailey Creeks'', in Forest County and Oneida County.

(L) LAUTERMAN LAKE AND KIEPER CREEK.—Certain land in the Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District, totaling approximately 2,500 acres, known as ''Lauterman Lake and Kieper Creek'', in Florence County.

(27) WYOMING: SAND CREEK AREA.—

(A) IN GENERAL.—Certain land in the Black Hills National Forest, totaling approximately 8,300 acres known as the ''Sand Creek area'', located in Crook County, in the far northwest corner of the Black Hills.

(B) BOUNDARY.—Beginning in the northwest corner and proceeding counterclockwise, the boundary for the Sand Creek Area roughly follows—

(i) forest Roads 863, 866, 866.1B;

(ii) a line linking forest roads 866.1B and 802.1B;

(iii) forest road 802.1B;

(iv) forest road 802.1;

(v) an unnamed road;

(vi) Spotted Tail Creek (excluding all private land);

(vii) forest road 829.1;

(viii) a line connecting forest roads 829.1 and 864;

(ix) forest road 852.1; and

(x) a line connecting forest roads 852.1 and 863.

(d) COMMITTEE OF SCIENTISTS.—

(1) ESTABLISHMENT.—The Secretaries concerned shall appoint a committee consisting of scientists who—

(A) are not officers or employees of the Federal Government;

(B) are not officers or employees of any entity engaged in whole or in part in the production of wood or wood products; and

(C) have not contracted with or represented any entity described in subparagraph (A) or (B) in a period beginning 5 years before the date on which the scientist is appointed to the committee.

(2) RECOMMENDATIONS FOR ADDITIONAL SPECIAL AREAS.—Not later than 2 years of the date of the enactment of this Act, the committee shall provide Congress with recommendations for additional special areas.

(3) CANDIDATE AREAS.—Candidate areas for recommendation as additional special areas shall have outstanding biological values that are exemplary on a local, regional, and national level, including the presence of—

(A) threatened or endangered species of plants or animals;

(B) rare or endangered ecosystems;

(C) key habitats necessary for the recovery of endangered or threatened species;

(D) recovery or restoration areas of rare or underrepresented forest ecosystems;

(E) migration corridors;

(F) areas of outstanding biodiversity;

(G) old growth forests;

(H) commercial fisheries; and

(I) sources of clean water such as key watersheds.

(4) GOVERNING PRINCIPLE—The committee shall adhere to the principles of conservation biology in identifying special areas based on biological values.

SEC. 204. RESTRICTIONS ON MANAGEMENT ACTIVITIES IN ANCIENT FORESTS, ROADLESS AREAS, WATERSHED PROTECTION AREAS, AND SPECIAL AREAS.

(a) RESTRICTION OF MANAGEMENT ACTIVITIES IN ANCIENT FORESTS.—On Federal land located in Ancient forests—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(b) RESTRICTION OF MANAGEMENT ACTIVITIES IN ROADLESS AREAS.—On Federal land located in roadless areas (except military installations)—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(c) RESTRICTION OF MANAGEMENT ACTIVITIES IN WATERSHED PROTECTION AREAS.—On Federal land located in watershed protection areas—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(d) RESTRICTION OF MANAGEMENT ACTIVITIES IN SPECIAL AREAS.—On Federal land located in special areas—

(1) no roads shall be constructed or reconstructed;

(2) no extractive logging shall be permitted except of non-native invasive tree species, in which case the limitations on logging in title I shall apply; and

(3) no improvements for the purpose of extractive logging shall be permitted.

(e) MAINTENANCE OF EXISTING ROADS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the restrictions described in subsection (a) shall not prohibit the maintenance of an improved road, or any road accessing private inholdings.

(2) ABANDONED ROADS.—Any road that the Secretary determines to have been abandoned before the date of enactment of this Act shall not be maintained or reconstructed.

(f) ENFORCEMENT.—

(1) FINDING.—Congress finds that all people of the United States are injured by actions on land to which this section applies.

(2) PURPOSE.—The purpose of this subsection is to foster the widest possible enforcement of this section.

(3) FEDERAL ENFORCEMENT.—The Secretary and the Attorney General of the United States shall enforce this section against any person that violates this section.

(4) CITIZEN SUITS.—

(A) IN GENERAL.—A citizen harmed by a violation of this section may enforce this section by bringing a civil action for a declaratory judgment, a temporary restraining order, an injunction, statutory damages, or other remedy against any alleged violator, including the United States, in any district court of the United States.

(B) JUDICIAL RELIEF.—If a district court of the United States determines that a violation of this section has occurred, the district court—

(i) shall impose a damage award of not less than $5,000;

(ii) may issue 1 or more injunctions or other forms of equitable relief; and

(iii) shall award to each prevailing party the reasonable costs of bringing the action, including attorney's fees, witness fees, and other necessary expenses.

(C) STANDARD OF PROOF.—The standard of proof in all actions under this paragraph shall be the preponderance of the evidence.

(D) TRIAL.—A trial for any action under this section shall be de novo.

(E) PAYMENT OF DAMAGES.—

(i) NON-FEDERAL VIOLATOR.—A damage award under subparagraph (B)(i) shall be paid by a non-Federal violator or violators designated by the court to the Treasury.

(ii) FEDERAL VIOLATOR.—

(I) IN GENERAL.—Not later than 40 days after the date on which judgment is rendered, a damage award under subparagraph (B)(i) for which the United States is determined to be liable shall be paid from the Treasury, as provided under section 1304 of title 31, United States Code, to the person or persons designated to receive the damage award.

(II) USE OF DAMAGE AWARD.—A damage award described under subclause (I) shall be used by the recipient to protect or restore native biodiversity on Federal land or on land adjoining Federal land.

(III) COURT COSTS.—Any award of costs of litigation and any award of attorney fees shall be paid by a Federal violator not later than 40 days after the date on which judgment is rendered.

(5) WAIVER OF SOVEREIGN IMMUNITY.—

(A) IN GENERAL.—The United States (including agents and employees of the United States) waives its sovereign immunity in all respects in all actions under this section.

(B) NOTICE.—No notice is required to enforce this subsection.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect on the date of enactment of this Act.

SEC. 302. EFFECT ON EXISTING CONTRACTS.

This Act and the amendments made by this Act shall not apply to any contract for the sale of timber that was entered into on or before the date of enactment of this Act.

SEC. 303. WILDERNESS ACT EXCLUSION.

This Act and the amendments made by this Act shall not apply to any Federal wilderness area designated under the Wilderness Act (16 U.S.C. 1131 et seq.).

By Mr. CORZINE:

S. 1942. A bill to require the President to submit to Congress a quarterly report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008; through fiscal year 2008; to the Committee on Armed Services.

Mr. CORZINE. Mr. President, I am introducing today a bill that will ensure that we properly budget for what we are now learning will be a long and costly war in Iraq. This legislation, which requires the President to submit a report every 90 days on the projected total costs of military operations and reconstruction efforts to Iraq is identifcal to an amendment I offered to the supplemental appropriations bill to October. That announcement was agreed to by unanimously consent. Unfortunately, it was removed in conference.

In recent days, the Administration has finally begun to acknowledge what Secretary of Defense Donald Rumsfeld wrote in an internal memorandum last month: that Iraq will be a ''long, hard slog.'' This past Thursday, November 20, President Bush told us that quote, ''We could have less troops in Iraq, we could have the same number of troops in Iraq, we could have more troops in Iraq, whatever is necessary to secure Iraq.'' The following day, the New York Times, citing a ''senior Army officer,'' reported that the Army was planning to keep about 100,000 troops in Iraq through early 2006.

For over a year, this Administration has downplayed the costs of the war in Iraq. Last September, after White House economic advisor Lawrence Lindsay put the figure at between $100 billion and $200 billion, OMB Director Mitch Daniels insisted that that estimate was, quote: ''very, very high.'' Mr. Lindsay, whose candor reportedly cost him his job, was the Administration official to provide anything close to a realistic estimate. In December, Director Daniels put the figure at $50 billion to $60 billion. A few weeks later, Secretary of Defense Donald Rumsfeld told us that the war would cost under $50 billion.

As the Administration planned for war, it stopped making any public estimates at all. As Deputy Defense Secretary Wolfowitz said in February, quote: ''I think it's necessary to preserve some ambiguity of exactly where the numbers are.'' Administration officials also insisted repeatedly that Iraq would pay for its own reconstruction. To quote Deputy Secretary Wolfowitz again: ''There's a lot of money there, and to assume that we're going to pay for it is just wrong.''

The Administration failed to include any military or reconstruction costs in its Fiscal Year 2004 budget estimate, and refused to submit to Congress a budget amendment. As a result, we passed a budget resolution that included enormous, fiscally irresponsible tax cuts but no money for a war that was already upon us. Even after President Bush had issued his ultimatum to Saddam Hussein, the Administration, along with my Republican colleagues, opposed a series of efforts to put aside between $80 billion and $100 billion for the war. Only the following week, after the budget resolution was passed, did we receive the first supplemental request, for nearly $75 billion, of which nearly $60 billion was for defense and nearly two and a half billion was for the reconstruction of Iraq.

Even with the war having begun, the Administration continued to downplay the expected costs of reconstruction. On March 27, Deputy Secretary Wolfowitz stated, quote: ''We're dealing with a country that can really finance its own reconstruction, and relatively soon.'' And, on April 10, Secretary Rumsfeld said, quote: ''I don't know that there's much reconstruction to do.''

These reassurances were contradicted flatly by outside experts. In March, a panel led by former Nixon and Ford Secretary of Defense James Schlesinger estimated that the cost of post-war reconstruction would be at least $20 billion a year. The panel, which included the first President Bush's ambassador to the United Nations, Thomas Pickering, former Chairman of the Joint Chiefs of Staff John Shalikashvili, and former Reagan U.N. ambassador Jeanne Kirkpatrick, concluded that President Bush had failed, quote: ''to fully describe to Congress and the American people the magnitude of the resources that will be required to meet the post-conflict needs'' of Iraq.

But the Administration continued to insist otherwise. In April, USAID Administrator Andrew Natsios was asked whether the Administration was sticking to its estimate of total costs. He responded, quote: ''That is our plan and that is our intention. And these figures, outlandish figures I've seen, I have to say, there a little bit of hoopla involved in this. Three months later, OMB Director Josh Bolton promised, quote: ''We don't anticipate requesting anything additional for the balance of the year.''

Then we got the bill: a second supplemental request for $87 billion, of which more than $20 billion was for the reconstruction of Iraq.

This war—which I opposed—has been far more costly to the American taxpayer than was necessary. The Administration's blind assumption that we would be greeted as liberators has resulted in unnecessary costs. The failure to prevent looting, for example, or to anticipate sabotage, has made reconstruction more expensive than the Administration promised.

The Bush Administration's unilateral approach to the war has also cost U.S. taxpayers. It is worth remembering that while the first Persian Gulf War cost more than $61 billion, our allies paid for all but $4.7 billion. Had President Bush managed to enlist more of our friends and allies in this effort, the American taxpayer would not be footing this enormous bill practically alone.

We are also paying for the vast majority of reconstruction costs, and may be paying more in the future. The World Bank has estimated Iraq's reconstruction costs to be $56 billion. Iraq also has $120 billion in debts that have not yet been restructured. Outside contributions have been relatively meager. The recent donors' conference in Madrid produced pledges of $13 billion, but two thirds of that amount was in the form of loans. As for Iraqi oil, next year's revenues will be used entirely for government operations, leaving nothing for reconstruction.

It is long past time for the Administration to be more forthcoming about the future costs of operations in Iraq. Right now, the only estimates come from outside sources, such as the Congressional Budget Office, which earlier this month estimated that with 67,000 to 106,000 military personnel in Iraq, the annual cost of the occupation would be between $14 billion and $19 billion. Given recent revelations about the Army's current planning, we might now expect those upper range costs, at least through 2006. And even these figures seem low considering that we are now spending in Iraq at the rate of $4 billion a month, which would translate into $48 billion per year.

We cannot continue to play guessing games with the war in Iraq, our national defense, or our children's future. The Congressional Budget Office has estimated the Fiscal Year 2004 ''on-budget deficit'' to be $644 billion. We have serious domestic needs in everything from health care, to education, to the environment. We are not adequately protecting ourselves against terrorism, denying our first responders

the resources they need and leaving critical infrastructure such as chemical facilities unguarded. We are underfunding veterans' benefits at a time when thousands of new veterans are returning home from Iraq wounded and disabled. And we are overstretching our troops and may have to consider a significant increase in end-strength. All of these priorities are put at risk so long as we fail to budget for future costs of the war and occupation in Iraq.

The Senate clearly recognized the seriousness of this problem when it agreed unanimously last month to this legislation. There is simply no reason why we should not expect the Administration to plan for the future costs of the occupation of Iraq, to budget accordingly, and to keep Congress and the American people informed.

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. 1942

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 ''Future Iraq Costs Act''.

SEC. 2. REPORT ON PROJECTED TOTAL COST OF UNITED STATES OPERATIONS IN IRAQ.

(a) QUARTERLY REPORT.—Not later than 30 days after the date of the enactment of this Act, and every 90 days thereafter, the President shall submit to each Member of Congress a report on the projected total cost of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008.

(b) EXPLANATION OF CHANGES IN PROJECTED COST.—The President shall include in each report submitted under subsection (a) after the initial report under that subsection an explanation for any change in the total projected total cost of United States operations in Iraq from the projected total cost of such operations stated in the preceding report.

(c) TERMINATION OF REPORTING REQUIREMENT IN FISCAL YEAR 2008.—No report is required under this section after December 31, 2007.

By Mr. ENSIGN (for himself, Mr. NELSON of Florida, Mr. COLEMAN, Mr. GRAHAM of South Carolina, Mr. CRAPO, Mr. REID, Mr. BAYH, Mr. EDWARDS, Mr. ALLARD, Mr. SMITH, Mr. ALLEN, and Mrs. BOXER):

S. 1944. A bill to enhance peace between the Israelis and Palestinians; to the Committee on Foreign Relations.

Mr. ENSIGN. Mr. President, a lot has changed in the climate of the Middle East since I was there in 1995, but unfortunately not enough has changed.

In 1995, the Oslo Accords were signed and suicide bombers detonated themselves on buses around Jerusalem. Eight years later, Israelis continue to face the daily threat of terrorism on their buses, in their grocery stores, in their restaurants, and in their cafes. For them, every single day is September 11. It's hard to imagine that kind of reality and the strength it takes to continue each day not knowing where the next attack will occur.

I think about September 11 here in the United States, and the shock many Americans felt—not just at the terrible loss of life, but the fact that terrorists had targeted our people here in our own country—where they live and work. I remember one commentator back then said—today, every American learned what it is like to be an Israeli.

We came together as a nation to comfort each other, but also to do whatever we could to prevent another attack on our soil and to eliminate the world of the evil terrorists who had targeted our innocent victims. In those moments and days that followed, leaders from around the world called to express their condolences. There were no calls to the United States to show restraint in responding to the terrorists. And it there were, they would have fallen on deaf ears. The world knew that President Bush and the United States would do whatever it took to keep our citizens safe. The security of our nation would always be our priority.

But when September 11 happens on a daily basis in Israel, the calls they get are not to express sympathy, but to urge restraint in responding to the attack. Not only is Israel criticized for doing exactly what the United States has done—respond to attacks against its citizens by going after the terrorists where they hide—Israel is even criticized for taking steps to secure its homeland security and prevent further attacks.

So where do we go from here?

Well, the legislation I am introducing with my colleagues, the junior Senator from Florida, focuses on the fact that Israel has a right to make the security of their country a priority and that such security is a major and enduring national security interest of the United States.

The bipartisan Israeli-Palestinian Peace Enhancement Act of 2003 contains strong, unequivocal expressions of the Senate's support for the President's June 24, 2002, speech and the vision of two states living side-by-side in peace and security.

However, it expresses the Senate's expectation that the Palestinian Authority must meet certain conditions before a Palestinian state is recognized, including: a leadership not compromised by terrorism; a firm commitment to peace with Israel; the dismantling of terrorist infrastructures in the West Bank and Gaza; sustained security cooperation with Israel; and an end to anti-Israel incitement.

It provides concrete, positive incentives for the Palestinians to achieve the reforms called for by President Bush and a negotiated peace with Israel by authorizing significant United States assistance, and a commitment to organize international assistance, to build the new state when it comes into being and has been recognized by the United States and Israel—conditions that can only occur in the absence of terrorism.

Ambiguous promises of non-aggression are not enough. Lasting peace means the absence of terror. Without legitimate guarantees for the security of the state of Israel, there can be no lasting peace in the region.

Words are cheap—and nowhere are they cheaper than in the Middle East. Until there is Palestinian leadership that is committed to eliminating the terrorist infrastructure, that is serious about making peace with Israel, and that envisions two states existing together, peace will not be known.

Who can we trust to support Israel in this hour of crisis?

Well, I believe we can trust President Bush. Particularly after September 11, the President understands thee can be no peace without security. He made that clear on June 24, 2002, when he gave an address in the Rose Garden that went above and beyond any other official United States position on the Middle East. He made clear that unless and until Israel has a trustworthy partner on the Palestinian side, there can be no lasting peace. And he emphasized that a Palestinian state could become a reality only after new leaders—not compromised by terror—were elected and a practicing democracy, based on tolerance and liberty was built.

That statement should be the road map to peace. That is why we have taken the principles the President laid out in his June 24 speech, and turned them into legislation.

In closing, I would like to thank the original cosponsors of the Israeli-Palestinian Peace Enhancement Act of 2003, including Senator BILL NELSON, Senator COLEMAN, Senator LINDSEY GRAHAM, Senator CRAPO, Senator REID, Senator BAYH, Senator EDWARDS, Senator ALLARD, Senator GORDON SMITH, Senator ALLEN, and Senator BOXER for joining me in working toward a lasting and true peace in the Middle East.

By Mr. CORZINE:

S. 1946. A bill to establish an independent national commission to examine and evaluate the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq and Operation Iraqi Freedom; to the Select Committee on Intelligence.

Mr. CORZINE. Mr. President, I am introducing today a bill to establish an independent, bipartisan commission to examine intelligence issues related to Iraq. This commission is necessary because what we have discovered on the ground in Iraq has shown our intelligence to be wrong. It is necessary because Administration officials misused intelligence—that is, they made public statements and submitted reports to Congress that the Administration knew at the time to be unsupported by the available intelligence. And it is necessary because inaccurate and misused intelligence played a role in leading us to war.

Accurate, objective, and credible intelligence is a fundamental cornerstone of our national security, particularly in an age of shadowy terrorist networks and clandestine weapons programs. Unless we improve our intelligence, we risk failing to identify serious threats to the United States and being distracted by lesser dangers at the expense of larger and more urgent security concerns.

This effort must include not only the collection and analysis of intelligence, but the use, reporting, and dissemination of intelligence assessments. If the American people are asked to go to war to preempt an attack, or—as in the case of Iraq—to prevent a possible future threat from emerging, it is critical that the public statements of our officials be supported by the available intelligence. If members of Congress are to consider authorizing the use of force, particularly against countries that have not attacked the United States, they must be provided with honest and complete intelligence. And if our allies are to be asked to join us in confronting these threats, the intelligence that we share with them and that we rely on to bolster our case must be credible in the eyes of the world.

I first proposed an independent commission to examine intelligence related to Iraq last summer, when it became clear that President Bush had made an important but unsubstantiated claim in his January 2002 State of the Union address. That claim was, quote: ''The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.''

Although this statement has been dismissed as the ''16 words,'' its significant cannot be overstated. The State of the Union address is the most important, the most scrutinized speech the President delivers. The statement concerned the most important topic a President can discuss—whether to send Americans to war. And this claim was the most important element of the President's argument for war: that there was evidence that Saddam Hussein might have the necessary materials to produce a nuclear bomb. As for the reference to the British government, it is hard to imagine how the use of the word ''learned'' could imply anything other than that the United States independently believed that the claim was true.

It turns out that the Bush Administration had ample reason to know at the time that what the President was telling the nation could not be substantiated. The CIA had sought to dissuade the White House from making claims about uranium purchases. And on February 5, a week after the State of the Union address, Secretary of State Powell made a presentation to the Untied Nations in which he omitted the claim precisely because it was not supported by the available intelligence.

Despite this knowledge, the Administration never issued a clarification. As a result, the President's statement stood, as an important element of the Administration's case for war. Only last summer, after Americans learned from Ambassador Joe Wilson and others what Administration officials knew at the time, did the Administration acknowledge that the uranium allegation should never have been included in the State of the Union Address.

The case generated outrage across party lines. Republicans as well as Democrats expressed serious concern about the credibility of the Administration and the country. They stressed that cabinet members, the vice president, and the entire administration are responsible for honestly representing intelligence. They called for someone in the Administration to be held accountable. The Senate passed a resolution by voice vote. The chairman of the Senate Intelligence Committee promised to undertake a, quote ''very aggressive review.'' And the Bush Administration insisted that it would cooperate. As White House spokesman Ari Fleischer stated on June 11, quote: ''The Administration welcomes the review. It's important.''

In July, when I first sought to establish this commission, there was no dispute that the use of intelligence, as well as the collection and analysis of intelligence, should be examined. Republicans who voted against the commission did so, they said, because the commission would intrude on the jurisdiction of the Intelligence Committee. I was, and remain supportive of efforts by the committee to look into the use of intelligence related to Iraq, an inquiry that is clearly included within the committee's jurisdiction. But it was and is my belief that an independent, bipartisan commission, building on the findings of Congressional and other investigations, could undertake the most thorough, depoliticized review possible.

Now, however, it seems an independent commission is the only remaining means left to examine the use, or misuse, of intelligence. On November 13, the Chairman of the Intelligence Committee announced that there would be no examination of how intelligence was used by policymakers. I deeply regret this decision by the chairman and fervently hope the committee will ultimately exercise its role, established in the resolution laying out its jurisdiction, in overseeing the, quote: ''use or dissemination'' of intelligence. In the meantime, I would expect that an independent commission would receive strong bipartisan support.

It is now beyond question that our intelligence on Iraq was inaccurate. After months of searching, investigative teams have yet to find stockpiles of chemical or biological weapons. David Kay, who heads up the Iraqi Survey Group, has stated that Iraq's nuclear program was only at the, quote: ''very most rudimentary level.'' The Administration has yet to produce evidence of the high-level ties between Iraq and al Qaeda that it warned of prior to the war. And now, tragically, we must add to the list of intelligence failures the inability to anticipate the current resistance to U.S. occupation. Clearly, the facts and circumstances surrounding these failings warrant a detailed and systematic review.

But what of the use of intelligence? As important as the State of the Union address was, that speech was only part of a larger case made by the Administration for war. Administration officials made many claims—particularly those related to chemical and biological weapons—that were expressed in terms that were more specific and more certain than the intelligence may have supported. Most troubling, however, were the highly dubious assessments and suggestions related to nuclear programs and terrorism with which the Administration built its most powerful and emotionally potent argument. That argument had three elements: 1. That Iraq had a nuclear weapons program, and possibly even a nuclear weapon; 2. that Saddam Hussein was allied with al Qaeda, and that he may have been involved with the terrorist attacks of September 11; and 3. that the threat was imminent.

The Administration began to make its argument in the summer of 2002. As vice President Cheney stated in an August 26 speech, quote: ''Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction.'' In an indication of how Administration officials would make their case over the next seven months, the vice president insisted that the intelligence indicated no doubt, no internal disagreement, and no uncertainty.

Then, on September 12, President bush, in his speech to the United Nations, went further, stating, quote: ''right now, Iraq is expanding and improving facilities that were used for the production of biological weapons.'' the President also made two statements regarding Iraq's alleged nuclear program. The first was that Iraq had made, quote: ''several attempts to buy high-strength aluminum tubes used to enrich uranium for a nuclear weapon.'' He failed to mention that neither the Department of Energy nor the Department of State's Bureau of Intelligence and Research believed that the tubes were intended for that purpose. The President's second statement added the missing ingredient: the uranium itself. As the President stated, quote: ''Should Iraq acquire fissile material, it would be able to build a nuclear weapon within year.'' This was the context for the President's claim made in the State of the Union address that Iraq had sought to purchase uranium from Africa.

The Administration continued making its case throughout the fall of 2002, adding claims concerning ties between Saddam Hussein and al Qaeda. One of many examples was Secretary Rumsfeld's September 26 statement that the

Administration had, quote: ''very reliable reporting of senior level contacts going back a decade.''

As Congress deliberated whether to authorize the use of force against Iraq, the Administration officials made increasingly alarming statements about Iraq's ties to al Qaeda and about its nuclear weapons program. On October 7, three days before the vote in the House of Representatives and four days before the vote in the Senate, President Bush gave a speech in which he said, unequivocally, that, quote: ''We know that Iraq and al Qaeda have had high-level contacts that go back a decade,'' and, quote: ''The evidence indicates the Iraq is reconstituting its nuclear weapons program.'' He repeated the allegations about uranium tubes and the warning about purchases of uranium. Then the President put it all together—the implication that Iraq was connected to the September 11 attacks, the implication that Iraq could have a nuclear bomb at any time, and the warning that Saddam Hussein could decide on any day to explode a nuclear bomb in the United States. Here is what the President said: ''Why do we need to confront it [Saddam] now? And there's a reason. We've experienced the horror of September the 11th. We have seen that those who hate America are willing to crash airplanes into buildings full of innocent people. Our enemies would be no less willing, in fact, they would be eager, to use biological or chemical, or a nuclear weapon. Knowing these realities, America must not ignore the threat gathering against us. Facing clear evidence of peril, we cannot wait for the final proof—the smoking gun—that could come in the form of a mushroom cloud.''

This was the most powerful, dire, and convincing warning a President could give. And it was based on one inference that the President has acknowledged he never had any evidence of, that Saddam was tied to September 11, and another which had already been refuted by many within the Administration, that Iraq was reconstituting its nuclear program.

Later statements included Secretary of Defense Rumsfeld's claims to specific knowledge of the whereabouts and movements of biological and chemical weapons. On March 11, he stated, quote: ''We know he continues to hide biological and chemical weapons, moving them to different locations as often as every 12 to 24 hours, and placing them in residential neighborhoods.'' On March 30, he said, quote: ''We know where they are. They're in the area around Tikrit and Baghdad and east, west, south and north somewhat.''

The Administration also continued to insist that the threat was imminent—a claim that served to counter arguments that the United Nations should be given more time. On February 6, the day after Secretary of State Powell made his presentation to the UN, Secretary of Defense Rumsfeld made an appeal for immediate action. ''Why now?'' he asked. ''The answer is that every week that goes by, his weapons of mass destruction programs become more mature.'' That same day, Deputy Secretary Wolfowitz stated, quote: ''Connections with terrorists, which go back decades, and which started some 10 years ago with al Qaeda, are growing every day.''

Finally, on March 16, the day before President Bush's ultimatum to Saddam Hussein, Vice President CHENEY went beyond claims that Iraq had the intent to produce nuclear weapons, and even beyond the claims that Iraq was seeking centrifuge equipment or uranium. Rather, the vice president stated flatly, quote: ''We believe he has, in fact, reconstituted nuclear weapons.'' This assertion, which the vice president has recently acknowledged was a misstatement, was not corrected. Instead, it was allowed to stand as nearly the final word on why we were going to war.

Questions surrounding the Administration's use of intelligence extend beyond public statements, to include reports to and testimony before Congress. One example of unsubstantiated reporting was the January 20 report to Congress, mandated by the use of force resolution, that cited Iraq's failure to declare its, quote: ''attempts to acquire uranium and the means to enrich it''—the same unsubstantiated claim made in the President's State of the Union address.

This commission would be authorized to examine other intelligence issues related to Iraq, as well. The Administration made claims related to weapons delivery systems, including President Bush's assertion on October 7 that, quote: ''Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical or biological weapons across broad areas,'' and that Iraq could use them for, quote: ''missions targeting the United States.'' There has never been evidence that Iraq had UAVs with ranges of thousands of miles.

Administration officials made claims related to the occupation, including Vice President CHENEY's March 16 assertion that, quote: ''I really do believe that we will be greeted as liberators,'' and Deputy Defense Secretary Wolfowitz's November 17 analogy to, quote: ''post-liberation France.''

The Administration also downplayed the costs of the occupation. Despite White House economic advisor Lawrence Lindsey's estimate that the occupation would cost between $100 and $200 billion—an estimate for which he was apparently fired—Secretary of Defense Rumsfeld on January 19 put the figure at, quote: ''something under $50 billion,'' On February 27, Deputy Defense Secretary Wolfowitiz stated that, quote: ''there's a lot of money there, and to assume that we're going to pay for it is just wrong.'' And, on March 27, Deputy Secretary Wolfowitz stated, quote: ''We're dealing with a country that can really finance its own reconstruction, and relatively soon.''

The independent commission I propose would be authorized to examine the relationship between policy makers and the intelligence community. Were members of the intelligence community pressured to produce analyses that conformed to the Administration's policies? Did Administration officials seek to bypass the normal analysis process by cherry-picking bits of intelligence that suited their agenda, through the Office of Special Plans in the Department of Defense or through other special or ad hoc arrangements? Did the Administration base its analyses on foreign intelligence sources of dubious credibility? These questions must be answered, and corrective measures undertaken, if our intelligence community is to be as effective and objective as we need it to be.

Perhaps the most egregious undermining, indeed betrayal, of the intelligence community was the identification by senior Administration officials of a covert CIA operative. The operative is the spouse of a person who has been called a national hero by President George H.W. Bush but who questioned the current Administration's statements regarding Iraq. The leak of this operative's identity sent an implicit warning to others in the intelligence community who might disagree with the Administration's positions. It potentially endanged the life of the operative and those with whom the operative worked. And it rendered the operative's skills, experience and sources permanently useless, thus wasting precisely the kind of intelligence asset that the United States so desperately needs right now.

The purpose of this commission is to identify ways in which we can learn from past mistakes and thus improve our collection, analysis, reporting, use and dissemination of intelligence. The commission's members, who will come from both parties, will be prominent Americans with experience in intelligence, the armed forces and other relevant areas. Their work will build on relevant Congressional and other investigations.

The commission, through an objective, independent, highly professional examination process, will help depoliticize an extremely complicated and sensitive topic. By reviewing intelligence related to Iraq beginning in 1998, it will draw conclusions about the use of intelligence by a Democratic as well as Republican Administration. And by reporting its recommendations directly to the President and to Congress, it will serve as a valuable resource outside the context of open political debate. In this respect, I disagree with the Chairman of the Intelligence Committee who has stated that the full Congress and the public could ''decide for themselves whether the intelligence was accurately represented by government officials.''

This issue is far too serious to simply ignore. Over one hundred thousand brave Americans are currently serving

in Iraq, facing challenges that require accurate and objective intelligence. We have an obligation to pursue every opportunity to improve that intelligence. Meanwhile, the United States faces other threats—from despotic regimes with nuclear, chemical, or biological weapons, from terrorism, and from the horrible possibility that terrorists could acquire these weapons. Our ability to confront these threats requires that our intelligence be accurate and objective. And, as we seek to enlist our friends and allies in our efforts to address these common threats, we must ensure that our intelligence is credible.

Unless we identify and correct the mistakes of the past, we will not be safer.

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. 1946

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 Iraq Intelligence Commission Act''.

SEC. 2. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Iraq Intelligence (in this Act referred to as the ''Commission'').

SEC. 3. PURPOSES.

The purposes of the Commission are as follows:

(1) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, on the weapons of mass destruction and related delivery systems capabilities of Iraq in the period from 1998 until the conclusion of military operations against Iraq under Operation Iraqi Freedom.

(2) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, on the connections and support, if any, of Iraq with and for the plans and intentions of terrorist groups to attack the United States or United States interests abroad during the period referred to in paragraph (1).

(3) To examine and evaluate the performance of the United States intelligence community with respect to the collection of intelligence, and the quality of intelligence obtained, during and after the period referred to in paragraph (1), on matters relating to—

(A) the conduct of military and intelligence operations against Iraq;

(B) the search for and securing of weapons of mass destruction, related delivery systems capabilities, and conventional weapons in Iraq; and

(C) the military, political, and economic aspects of the occupation of Iraq.

(4) To examine and evaluate the quality of the analysis by the United States intelligence community of the available intelligence related to the matters referred to in paragraphs (1) through (3), including intelligence from foreign intelligence services, that served as a basis during the period referred to in paragraph (1) for—

(A) reports, testimony, and presentations to policymakers in the Executive Branch and Congress, and to United Nations bodies and other consumers; and

(B) assessments that were used or disseminated by the Executive Branch.

(5) To examine and evaluate the effect, if any, on the United States intelligence community of the actions of Executive Branch officials regarding the collection, analysis, and reporting on intelligence matters referred to in paragraphs (1) through (3).

(6) To examine and evaluate the relevant facts and circumstances relating to the use and dissemination by Executive Branch officials of intelligence and intelligence analyses underlying assessment of intelligence matters referred to in paragraphs (1) through (3) during the period referred to in paragraph (1), including assessments contained in public speeches, statements, and interviews, reports to and testimony before Congress, and communications with and reports and presentations to United Nations bodies.

(7) To build on the investigations of other entities, and avoid unnecessary duplication, by reviewing the work, findings, conclusions, and recommendations of other Executive Branch, Congressional, or independent commission investigations into the collection, analysis, reporting, use, and dissemination of intelligence related to Iraq by the United States.

(8) Based on the examinations and evaluations under paragraphs (1) through (6) and the work, findings, conclusions, and recommendations of other investigations referred to in paragraph (7), to identify corrective measures to improve the collection, analysis, reporting, use, and dissemination of intelligence by the Executive Branch, and to report to the President and Congress on the examinations, evaluations, findings, and conclusions of the Commission and on the recommendations of the Commission with respect to such corrective measures.

SEC. 4. COMPOSITION OF COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as co-chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as co-chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, the armed services, law, intelligence, and foreign affairs.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than one month after the date of the enactment of this Act.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the joint call of the co-chairmen or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 5. FUNCTIONS OF COMMISSION.

The functions of the Commission are—

(1) to conduct an investigation into the relevant facts and circumstances relating to the collection, analysis, reporting, use, and dissemination by the United States intelligence community and others in the Executive Branch of intelligence relating to Iraq and Operation Iraqi Freedom, including—

(A) an examination and evaluation of the quantity and quality of United States intelligence underlying assessments made during the period referred to in section 3(1) of—

(i) weapons of mass destruction and delivery systems capabilities of Iraq;

(ii) connections and support, if any, of Iraq with and for the plans and intentions of terrorist groups to attack the United States or United States interests abroad;

(B) an examination and evaluation of the quantity and quality of United States intelligence underlying assessments made during after the period referred to in section 3(1) on intelligence matters relating to—

(i) the conduct of military and intelligence operations against Iraq;

(ii) the search for and securing of weapons of mass destruction, related delivery systems capabilites, and conventional weapons in Iraq; and

(iii) the military, political, and economic aspects of the occupation of Iraq;

(C) an examination and evaluation regarding whether the analytical judgments in the assessments referred to in subparagraphs (A) and (B) were thorough, timely, objective, independent, and reasonable, based upon intelligence collection;

(D) an examination and evaluation of the accuracy of the assessments referred to in subparagraphs (A) and (B) when compared with the results of the investigative efforts of the Iraq Survey Group and other relevant Executive Branch and Congressional entities, and with relevant assessments of the United Nations and other multilateral bodies, foreign governments, nongovernmental organizations, and other institutions and individuals;

(E) an examination and evaluation of the quality of the intelligence on Iraq that was provided to the United States intelligence community and Executive Branch policymakers, including by foreign intelligence services, that served as a basis during the period referred to in section 3(1) for—

(i) reports, testimony, and presentations to policymakers in the Executive Branch and Congress, and to United Nations bodies and other consumers; and

(ii) assessments that were used or disseminated by the Executive Branch;

(F) a determination of the extent, if any, to which elements of the United States intelligence community were inappropriately pressured by members of the Executive Branch to produce intelligence consistent with such members policy objectives, and of the extent, if any, to which intelligence was manipulated or misrepresented by members of the Executive Branch or elements under their control;

(G) an assessment of the extent to which Congress was kept fully and currently informed about intelligence related to Iraq and Operation Iraqi Freedom;

(H) a determination of the extent to which the intelligence of the United States intelligence community, and of the United States Armed Forces and coalition forces, were sufficiently accurate, thorough, timely, objective, and independent to prepare such forces to conduct effective military and intelligence operations against Iraq, including the search for and securing of weapons of mass destruction and conventional weapons in Iraq, and to prepare such forces and other United States and coalition entities to successfully carry out the military, political, and economic aspects of the occupation of Iraq; and

(I) an examination, evaluation, and assessment of such other related facts and circumstances that the Commission considers appropriate;

(2) to identify, review, and evaluate the lessons learned from issues related to the collection, analysis, reporting, use, and dissemination of intelligence relating to Iraq and Operation Iraqi Freedom;

(3) to investigate the facts and circumstances relating to disclosures, if any, by Executive Branch officials of the identify of a covert Central Intelligence Agency official; and

(4) to submit to the President and Congress the reports provided for by section 11.

SEC. 6. POWERS OF COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—A subpoena may be issued under this subsection only—

(I) by the joint agreement of the co-chairmen; or

(II) by the affirmative vote of 5 members of the Commission.

(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of a co-chairman or any member designated by 5 members of the Commission, and may be served by any person designated by a co-chairman or by a member designated by 5 members of the Commission.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this Act.

(c) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission may secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this Act. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by a co-chairman, the chairman or co-chairman of any subcommittee created by 5 members of the Commission, or any member designated by 5 members of the Commission.

(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 7. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports provided for by subsections (a) and (b) of section 11.

(c) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

SEC. 8. STAFF OF COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The co-chairmen, acting jointly and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 9. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 10. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this Act without the appropriate security clearances.

SEC. 11. REPORTS OF COMMISSION; TERMINATION.

(a) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such examinations, evaluations, findings, and conclusions of the Commission, and such recommendations with respect to corrective measures (including changes in policies, practices, organizational structures, and arrangements), as have been agreed to by a majority of Commission members.

(b) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such examinations, evaluations, findings, and conclusions of the Commission, and such recommendations with respect to corrective measures (including changes in

policies, practices, organizational structures, and arrangements), as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

SEC. 12. FUNDING.

(a) IN GENERAL.—Of the amounts authorized to be appropriated for the intelligence and intelligence-related activities of the United States Government for fiscal year 2004, $15,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this Act.

(b) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (a) shall remain available until the termination of the Commission.

By Mr. REID (for himself and Mr. DASCHLE):

S. 1948. A bill to provide that service of the members of the organization known as the United States Cadet Nurse Corps during World War II constituted active military service for purposes of laws administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1948

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 ''United States Cadet Nurse Corps Equity Act of 2003''.

SEC. 2. SERVICE DEEMED TO BE ACTIVE MILITARY SERVICE.

(a) IN GENERAL.—For purposes of section 401(a)(1)(A) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note), the Secretary of Defense is deemed to have determined that qualified service of a person constituted active military service.

(b) DETERMINATION OF DISCHARGE STATUS.—(1) The Secretary of Defense shall issue an honorable discharge under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 to each person whose qualified service warrants an honorable discharge.

(2) Such discharge shall be issued before the end of the one-year period beginning on the date of the enactment of this Act.

SEC. 3. PROHIBITION OF RETROACTIVE BENEFITS.

No benefits may be paid to any person as a result of the enactment of this Act for any period before the date of the enactment of this Act.

SEC. 4. DEFINITION.

For purposes of this Act, the term ''qualified service'' means service of a person as a member of the organization known as the United States Cadet Nurse Corps during the period beginning on July 1, 1943, and ending on December 15, 1945.

By Mr. BIDEN:

S. 1949. A bill to establish The Return of Talent Program to allow aliens who are legally present in the United States to return temporarily to the country of citizenship of the alien if that country is engaged in post-conflict reconstruction, and for other purposes; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, one of the greatest challenges we face today is how to address the needs of failed states—or countries that are on the verge of becoming failed states—and how to rebuild post-conflict countries. It is a critical issue, and one that we cannot afford to get wrong—for the sake of the people living in those nations, and for the sake of our own security.

Last January, a bipartisan commission organized by the Center for Strategic and International Studies and the Association of the U.S. Army found to no one's surprise that ''failed states matter—for national security as well as for humanitarian reasons. If left to their own devices, such states can become sanctuaries for terrorist networks, organized crime and drug traffickers, as well as posing grave humanitarian challenges and threats to regional stability.''

The most obvious case in point is the reconstruction of Iraq. I've spent many hours on this floor making clear that we have to get it right in Iraq. And in addition to Iraq, unfortunately, we can talk about many other states that are either unstable, or are tenuously recovering from past conflicts including Liberia, Afghanistan, East Timor, Kosovo, Bosnia, Haiti, and Somalia. We need comprehensive strategies to address the many needs in rebuilding all of these struggling countries.

A significant component of reconstruction, in my view, is to tap into the store of human as well as financial resources here in the United States. We should allow, and indeed encourage, immigrants from post-conflict countries to use their skills, talents,and knowledge to be part of the efforts to rebuild. In fact, the diaspora presents one of the best collective resources that exists: these people know the communities. They know the culture. They know the language—more than any contractors, more than any humanitarian workers from the outside, no matter how well-trained, no matter how much expertise they may have.

So today, Mr. President, I am introducing legislation creating a visa ''Return of Talent'' program.

The idea is simple: a Return of Talent program would allow legal immigrants in the United States to return home to help with reconstruction. ''Legal Permanent Residents'' will be able to return temporarily to their countries after a conflict to help rebuild, without their time out of the United States affecting their ability to meet their requirements for U.S. citizenship.

Under current law, a Legal Permanent Resident who want to apply for U.S. citizenship is required to be physically present in the United States for at least half of the five years immediately preceding the date of filing the naturalization application.

This residency requirement could be particularly difficult to meet for those who may have family and friends at home who are in desperate need of help. We should not stand in their way of going home, holding over them their hope for citizenship here in the United States. We should be helping them bring their talent and expertise home, helping them help their country of origin at a time of greatest need.

Recent press articles have highlighted stories of such indivduals—engineers, bankers, teachers and translators—who are willing to contribute to reconstruction efforts. They simply cannot do so without jeopardizing their immigration status.

This legislation would encourage those skilled and committed individuals to return to their countries of origin to revive the business, industry, agriculture, education and other sectors that have been weakened or destroyed after years of conflict.

The Return of Talent program would include any individual who demonstrates an ability and willingness to make a material contribution to the post-conflict reconstruction in their countries of origin.

The program would apply to immigrants from countries where U.S. armed forces are, or have engaged in the past ten years, in armed conflict or peacekeeping, or to immigrants who are from countries where the United Nations Security Council has authorized peacekeeping operations in the past ten years.

Estimates of individuals who could participate in this program are relatively low. For example, the United States admitted 1,764 Afghani and 5,196 Iraqi immigrants in 2002, and similar levels since 1992, who are not Legal Permanent Residents eligible to pursue U.S. citizenship. Yet, while the program would have a small impact on the U.S. naturalization process, the contributions of even a few hundred individuals could have a tremendous positive effect on post-conflict reconstruction work.

In simple terms, a Return of Talent program makes sense. Everybody wins: The United States is able to support rebuilding efforts; immigrants are able to use their skills and resources to help rebuild their communities without jeopardizing their immigration status; and post-conflict countries, and the people in them, receive much-needed assistance.

We have not done enough in Iraq, Afghanistan and many other countries that are—or are on the verge of becoming—failed states. As the ''Winning the Peace'' report also states, ''Despite over a decade of recent experience in trying to address the challenges of . . . rebuilding countries following conflict, U.S. capacity of addressing these challenges remains woefully inadequate.''

A Return of Talent program is an important piece of our overall strategy to stabilize and rebuild countries torn by conflict. I urge my colleagues to support his legislation.

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

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

S. 1949

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 ''Return of Talent Act''.

SEC. 2. RETURN OF TALENT PROGRAM.

(a) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

''TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM

''SEC. 317A. (a) IN GENERAL.—The Secretary of Homeland Security shall establish the Return of Talent Program to permit eligible aliens to temporarily return to the alien's country of citizenship in order to make a material contribution to that country if the country is engaged in post-conflict reconstruction activities, for a period not exceeding 24 months, unless an exception is granted under subsection (d).

''(b) ELIGIBLE ALIEN.—An alien is eligible to participate in the Return of Talent Program established under subsection (a) if the alien meets the special immigrant description under section 101(a)(27)(N).

''(c) FAMILY MEMBERS.—The spouse, parents, siblings, and any children of an alien who participates in the Return of Talent Program established under subsection (a) may return to such alien's country of citizenship with the alien and reenter the United States with the alien.

''(d) EXTENSION OF TIME.—The Secretary of Homeland Security may extend the 24-month period referred to in subsection (a) upon a showing that circumstances warrant that an extension is necessary for post-conflict reconstruction efforts.

''(e) RESIDENCY REQUIREMENTS.—An immigrant described in section 101(a)(27)(N) who participates in the Return of Talent Program established under subsection (a), and the spouse, parents, siblings, and any children who accompany such immigrant to that immigrant's country of citizenship, shall be considered, during such period of participation in the program—

''(1) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

''(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

''(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.''.

(b) TABLE OF CONTENTS.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 317 the following:

''317A. Temporary absence of persons participating in the Return of Talent Program.''.

SEC. 3. ELIGIBLE IMMIGRANTS.

Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon after ''Improvement Act of 1998'';

(2) in subparagraph (M), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(N) an immigrant who—

''(i) has been lawfully admitted to the United States for permanent residence;

''(ii) demonstrates an ability and willingness to make a material contribution to the post-conflict reconstruction in the alien's country of citizenship; and

''(iii) as determined by the Secretary of State in consultation with the Secretary of Homeland Security—

''(I) is a citizen of a country in which Armed Forces of the United States are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations; or

''(II) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination.''.

SEC. 4. REPORT TO CONGRESS.

Not later than 24 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 2;

(2) the post-conflict reconstruction efforts that benefited, or were made possible, through participation in the program; and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

SEC. 5. REGULATIONS.

Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall promulgate regulations to carry out this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Bureau of Citizenship and Immigration Services for each of the fiscal years 2004 and 2005, such sums as may be necessary to carry out this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 273—CONDEMNING THE TERRORIST ATTACKS IN ISTANBUL, TURKEY, ON NOVEMBER 15 AND 20, 2003, EXPRESSING CONDOLENCES TO THE FAMILIES OF THE INDIVIDUALS MURDERED IN THE ATTACKS, EXPRESSING SYMPATHIES TO THE INDIVIDUALS INJURED IN THE ATTACKS, AND EXPRESSING SOLIDARITY WITH THE REPUBLIC OF TURKEY AND THE UNITED KINGDOM IN THE FIGHT AGAINST TERRORISM

Mr. BROWNBACK (for himself and Mr. BIDEN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 273

Whereas, in Istanbul, Turkey, on November 15, 2003, two explosions set off minutes apart during Sabbath morning services devastated Neve Shalom, the largest synagogue in the city, and the Beth Israel synagogue, about 3 miles away from Neve Shalom;

Whereas the casualties of more than 20 people killed and more than 300 people wounded in the bombing attacks on the synagogues included both Muslims and Jews;

Whereas, on November 20, 2003, two bombs exploded in Istanbul at the Consulate of the United Kingdom and the HSBC Bank;

Whereas the casualties of more than 25 people killed and 450 people wounded in the November 20, 2003, bombing attacks included Muslims and Christians, and Turks, British diplomats, and visitors to the Republic of Turkey;

Whereas troops of the United Kingdom are part of the United States-led coalition that liberated Iraq from the regime of Saddam Hussein and are now present in Iraq under the auspices of the United Nations Security Council;

Whereas the acts of murder committed on November 15 and 20, 2003, in Istanbul, Turkey, were cowardly and brutal manifestations of international terrorism;

Whereas the Government of Turkey immediately condemned the terrorist attacks in the strongest possible terms and has vowed to bring the perpetrators to justice at all costs;

Whereas the United States, the United Kingdom, and Turkey equally abhor and denounce these hateful, repugnant, and loathsome acts of terrorism;

Whereas, in light of the escalation of anti-Semitic activities, the safety and security of Jewish people throughout the world is a matter of serious concern;

Whereas, since Turkey cherishes its traditions of hospitality and religious tolerance, and in particular its history of more than 500 years of good relations between Jews and Muslims, the attacks on synagogues, consular premises, and commercial buildings came as a special shock to the people of Turkey and to their friends throughout the world;

Whereas the United States and Turkey are allied by shared values and a common interest in building a stable, peaceful, and prosperous world;

Whereas Turkey, a predominantly Muslim nation with a secular government, has close relations with Israel and is also the only predominantly Muslim member of the North Atlantic Treaty Organization; and

Whereas the acts of murder committed on November 15 and 20, 2003, demonstrate again that terrorism respects neither boundaries nor borders: Now, therefore, be it

Resolved, That the Senate—

(1) condemns in the strongest possible terms the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003;

(2) expresses its condolences to the families of the individuals murdered in the terrorist attacks, expresses its sympathies to the individuals injured in the attacks, and conveys its hope for the rapid and complete recovery of all such injured individuals;

(3) expresses its condolences to the people and the governments of the Republic of Turkey and the United Kingdom over the losses they suffered in these attacks; and

(4) expresses its solidarity with the United Kingdom, Turkey, and all other countries that stand united against terrorism and work together to bring to justice the perpetrators of these and other terrorist attacks.

SENATE RESOLUTION 274—TO AUTHORIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FRIST (for himself, and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to: