(Mr. BREAUX), the Senator from Massachusetts (Mr. KERRY) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 1937, a bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes.

S. 1973

At the request of Mr. DEWINE, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1973, a bill to amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services.

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1973, supra.

S. 1974

At the request of Mr. DASCHLE, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1974, a bill to make improvements to the Medicare Prescriptions Drug, Improvement, and Modernization Act of 2003.

S. 1979

At the request of Mr. THOMAS, his name was added as a cosponsor of S. 1979, a bill to amend the Internal Revenue Code of 1986 to prevent the fraudulent avoidance of fuel taxes.

S.J. RES. 26

At the request of Mr. ALLARD, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S.J. Res. 26, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 54

At the request of Mr. MCCAIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. Res. 54, a resolution to provide Internet access to certain Congressional documents, including certain Congressional Research Service publications, certain Senate gift reports, and Senate and Joint Committee documents.

S. RES. 202

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

S. RES. 276

At the request of Mrs. FEINSTEIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. Res. 276, a resolution expressing the sense of the Senate regarding fighting terror and embracing efforts to achieve Israeli-Palestinian peace.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM of Florida:

S. 1980. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. GRAHAM of Florida. Mr. President, today I rise to introduce the Voter Confidence and Increased Accessibility Act.

In 2000, Florida grabbed the national spotlight as an unfortunate example of an electoral process gone awry. The question of who would assume our Nation's highest office became contingent on such things as whether a chad was bulging or hanging. In the aftermath of that debacle, Americans demand that Congress improve the accuracy and integrity of our electoral process. Congress responded with the Help America Vote Act (HAVA), which we passed in 2002.

HAVA aimed to modernize our electoral system and there have been some positive developments. Under the law, States have replaced punch card and lever voting systems with modern computer voting machines. Modernization, however, has failed to overcome all the pitfalls seen in recent elections. In 2002, Floridians were subject to another failure of our electoral process when a software error failed to court approximately 100,000 votes.

As it now stands, computer-voting systems—including the popular touch screen models—are not mandated to include a paper record verifying voter intent. In the absence of a paper trail, confirming the accuracy of a computer voting machine is very difficult, sometimes even impossible. Further, voting irregularities, security intrusions and electronic errors can go unnoticed. We have a duty to our democracy to continue to address challenges that threaten to undermine the security and reliability of our electoral system.

The Voter Confidence & Increased Accessibility Act renews our commitment to fulfilling that obligation. It will take us one step closer to our ultimate goal: ensuring that every vote really counts. This legislation responds to a set of challenges presented by computer voting systems. It would require all voting systems produce a verifiable paper record. States would also be given assistance in meeting this standard through funds dedicated to HAVA.

The Voter Confidence & Increased Accessibility Act also stipulates several other provisions to ensure that every vote really counts. It would prohibit the use of unreported software and wireless communication devices in all voting systems. It would also restrict electronic communications from voting machines, permitting outgoing transmissions of vote totals only.

The legislation specifies that voting systems must comply with these standards in time for the November 2004 general election. In the event that a locality is unable to get their computer voting systems compliant by this deadline, they are authorized to use a paper system as an interim measure. The Federal Government would be authorized to pay the cost of these paper systems for the November 2004 election.

The Voter Confidence & Increased Accessibility Act also requires that individuals with disabilities must be accommodated with electronic voting systems by January 1, 2006, a year earlier than mandated by HAVA. While a paper record of a disabled persons vote is not expressly required, voting systems for disabled persons must include a means for voter verification. In the event a jurisdiction cannot meet this standard, disabled voters must be given the option to utilize a temporary paper system, with the assistance of an aide of their choosing.

Finally, the legislation would require the Election Assistance Commission to conduct unannounced recounts in .5 percent of domestic jurisdictions and .5 percent of overseas jurisdictions. This way, Congress and America's voters can be assured that the election equipment is operating properly, and votes are really being counted.

Creating these new standards will help ensure that our elections accurately reflect the intent of the voting public, and put into place an election system in which Americans can have full confidence.●

By Mrs. CLINTON:

S. 1986. A bill to amend the help America Vote Act of 2002 to require voter verification and improved security for voting systems under title III of the Act, and for other purposes; to the Committee on Rules and Administration.

Mrs. CLINTON. Mr. President, I rise to introduce the Protecting American Democracy Act of 2003, legislation that is vital to ensuring that the voting systems used in our Federal elections are as secure as possible while also ensuring that each and every voter in our Nation has an equal opportunity to verify his or her vote before that vote is cast and permanently recorded. At its core, this legislation will ensure that every vote is properly counted, ensuring the integrity of each vote, which is at the heart of our democracy.

In recent months, there has been discussion about the increasing use of electronic voting systems such as direct recording electronic systems (DREs), the first completely computerized voting systems. Computerized voting systems can have many advantages. As the Congressional Research

Service has reported, they are arguably the most user-friendly and versatile of any current voting system. Among many features, such voting machines can be easily programmed to display ballots in different languages and can be made fully accessible for persons with disabilities, including the visually impaired. They can also prevent overvotes and spoilage of ballots due to extraneous marks since no document ballot is involved. In addition, fully computerized systems have the ability to notify voters of undervotes. Presently, no other kind of voting system possesses so many features. For this reason, it is expected that within the next two years, with funding authorized under the Help America Vote Act of 2002 (''HAVA''), state and local jurisdictions across the country will begin purchasing fully computerized systems.

One of the disadvantages of these electronic voting systems, however, is that they do not give voters an opportunity to verify their votes—to confirm that the voting machinery is registering the vote that the voter intended to cast—before the vote is cast and permanently recorded. In addition, electronic voting systems raise other concerns because of the ability of the software in the voting system to be compromised, or worse, maliciously attacked, by someone who may want to alter the voting results. Indeed, a number of recent studies, including the July 2001 study by Caltech/MIT, the July 2003 study by Johns Hopkins and Rice universities, the September 2003 study by the Science Applications International Corporation, requested by the Governor of Maryland, and the two November 2003 studies conducted by Compuware Corporation and InfoSENTRY, requested by the Ohio Secretary of State, pointed to significant and disturbing security risks in electronic voting systems and related administrative procedures and processes.

That is why in addition to ensuring that voters have an opportunity to verify their vote, it is vital that we improve the security of voting system technology, and that means not only the kind of software that is used but also how, for example, that software is designed, stored, disseminated, updated, field tested, and used in an actual election. This is a developing consensus among computer security experts that not only is the security of electronic voting systems wholly inadequate, but that the security policies and procedures that State and local election officials, voting system vendors, and others use are non-existent, inadequate, or, if they exist, are not followed, which is the same as having no policy at all.

Our Nation is the greatest Nation on earth and it is the leading democracy in the world. Central to that democracy is ability of Americans to have confidence in the voting system used to register and record their votes. This is a fundamental standard that must be met. I have concerns, however, that our Nation is falling short of that standard.

That is why I am today introducing the ''Protecting American Democracy Act of 2003,'' which amends by adding a voter verification requirement for voting systems to give each voter an opportunity to verify his or her vote at the time the vote is cast. Voters will be given an opportunity to correct any error made by the voting system before the permanent voting record is preserved.

While requiring that all election jurisdictions give voters the ability to verify their votes, this legislation also gives States and local jurisdictions the flexibility to employ the most appropriate, accurate, and secure voter verification technologies, which may include voter-verifiable paper ballots, votemeters, modular voting architecture, and/or encrypted votes, for their State or jurisdiction in a uniform and nondiscriminatory manner. Any voter verification method used must ensure that voters with disabilities and other affected voters have the ability to cast their vote in private, and language minorities must have equal access in verifying their vote. This is important if we are to ensure that all Americans—including the more than 20 million voters who are visually impaired, the more than 40 million Americans who lack basic literacy skills, and millions of language minorities—will be able to exercise their constitutional right to vote.

To address critical security issues, the ''Protecting American Democracy Act of 2003'' also amends HAVA by adding a security requirement for voting systems to ensure that voting systems are as secure as possible. Specifically, voting systems must adhere to the security requirements for Federal computer systems as required under current law or, alternatively, more stringent requirements adopted by the Election Assistance Commission. Currently no such requirement exists. I believe that, at minimum, the systems used by the people of the United States to exercise their constitutional right to vote, the hallmark of our democracy, should be at least as secure as the computer systems used by the Federal Government.

The security requirements must also provide that no voting system shall contain any wireless device, which reduces the risk that hackers will be able to attack any electronic voting system. In addition, all software and hardware used in any electronic voting system must be certified by laboratories accredited by the Commission as meeting all security requirements.

The Act also requires the Election Assistance Commission to report to Congress within 6 months of enactment regarding a proposed security review and certification process for all voting systems. Within 3 months of enactment, the Government Accounting Office, unless the Commission has already completed the following report, must issue a report to Congress on the operational and management systems that should be employed to safeguard the security of voting systems, together with a schedule for how quickly each such measure should be implemented.

Lastly, immediately upon enactment, the National Institute of Standards and technology (NIST) must provide security consultation services to State and local jurisdiction. Two million dollars in Fiscal Years 2004 through 2006 are authorized to be appropriated to assist NIST in providing these security consultation services.

I cannot think of a more significant risk to our democracy than for Americans to lack complete confidence in the voting systems used to cast and count their votes in Federal elections. For all those who believe that in a democracy, there is no more important task than assuring the sanctity of votes, this should be an easy step to take to assure it. For this reason, I urge all of my colleagues to support this legislation. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1986

*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 ''Protecting American Democracy Act of 2003''.

**SEC. 2. REQUIRING VERIFICATION FOR VOTERS.**

(a) IN GENERAL.—Section 301(a)(2) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(2)) is amended by adding at the end the following new subparagraph:

''(C) VOTER VERIFICATION.—

''(i) The voting system shall provide a means by which each individual voter must be able to verify his or her vote at the time the vote is cast, and shall preserve each vote within the polling place on the day of the election in a manner that ensures the security of the votes as verified for later use in any audit.

''(ii) The voting system shall provide the voter with an opportunity to correct any error made by the system before the permanent record is preserved for use in any audit.

''(iii) The verified vote produced under this subparagraph shall be available as an official record.

''(iv) Any method used to permit the individual voter to verify his or her vote at the time the vote is cast and before a permanent record is created—

''(I) shall use the most accurate technology, which may include voter-verifiable paper ballots, votemeters, modular voting architecture, and encrypted votes, in a uniform and nondiscriminatory manner;

''(II) shall guarantee voters with disabilities and other affected voters the ability to cast a vote in private, consistent with paragraph (3)(A); and

''(III) shall guarantee voters alternative language accessibility under the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a), consistent with paragraph (4).''.

**SEC. 3. REQUIRING INCREASED SECURITY FOR VOTING SYSTEMS.**

(a) Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)) is amended by

adding at the end the following new paragraph:

''(7) INCREASED SECURITY FOR VOTING SYSTEMS.—

''(A) VOTING SYSTEM SECURITY REQUIREMENT.—The voting system shall adhere to security requirements for Federal computer systems or more stringent requirements adopted by the Election Assistance Commission after receiving recommendations from the Technical Guidelines Development Committee under sections 221 and 222. Such requirements shall provide that no voting system shall contain any wireless device. All software and hardware used in any electronic voting system shall be certified by laboratories accredited by the Commission as meeting the requirements of this subsection.

''(B) REPORT TO CONGRESS ON SECURITY REVIEW.—The Commission, in consultation with the National Institute of Standards and Technology (NIST), shall report to Congress not later than 6 months after the date of enactment of the Protecting American Democracy Act of 2003 regarding a proposed security review and certification process for all voting systems.

''(C) GENERAL ACCOUNTING OFFICE REPORT.—Not later than 3 months after the date of enactment of the Protecting American Democracy Act of 2003, the Government Accounting Office, unless the Commission has previously completed such report, shall issue a report to Congress on the operational and management systems that should be employed to safeguard the security of voting systems, together with a schedule for how quickly each such system should be implemented.

''(D) PROVISION OF SECURITY CONSULTATION SERVICES.—

''(i) IN GENERAL.—On and after the date of enactment of the Protecting American Democracy Act of 2003, the National Institute of Standards and Technology (NIST) shall provide security consultation services to State and local jurisdictions.

''(ii) AUTHORIZATION.—To carry out the purposes of this subparagraph, $2,000,0000 is authorized for each of fiscal years 2004 through 2006.''.

**SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall take effect as if included in the enactment of the Help America Vote Act of 2002.

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By Mr. LUGAR:

S. 1987. A bill to implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, known as ''the Additional Protocol'' signed by the United States on June 12, 1998; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, at the request of the administration, I am pleased to introduce the Additional Protocol Implementation Act of 2003. This important legislation is needed to implement the provisions of the Protocol to the Agreement of the International Atomic Energy Agency, IAEA, Regarding Safeguards in the United States.

The United States signed the Additional Protocol in Vienna on June 12, 1998. President Bush submitted the Additional Protocol to the Senate on May 9, 2002. The State Department sent the implementing legislation to us on November 19, 2003, and asked that it be considered in conjunction with the Senate's advice and consent on the Protocol. The adoption of this agreement is an important step in demonstrating U.S. leadership in the fight against the spread of nuclear weapons. The Additional Protocol will provide the United States and the IAEA with another tool as we attempt to secure broader inspection rights in non-nuclear-weapon states that are parties to the Treaty on the Nonproliferation of Nuclear Weapons, NPT.

When the Committee on Foreign Relations reported out the NPT in 1968, it noted that ''the treaty's fundamental purpose is to slow the spread of nuclear weapons by prohibiting the nuclear weapon states which are party to the treaty from transferring nuclear weapons to others, and by barring the non-nuclear weapon countries from receiving, manufacturing, or otherwise acquiring nuclear weapons.'' Since the Senate ratified the NPT, we have seen 188 states join the United States in approving the treaty. But recently we also have seen a disturbing increase in the global availability of nuclear materials and reprocessing and enrichment technology. To ensure that these materials and technologies are devoted only to peaceful purposes, the IAEA must have the power to conduct intrusive inspections at almost any location in a non-nuclear-weapon state to verify state parties' commitments under the NPT.

The world community has learned that existing safeguard arrangements in non-nuclear-weapon states do not provide the IAEA with a complete and accurate picture of possible nuclear weapons-related activities. It is critical that the IAEA have the ability to expand the scope of its activities in states that pose a potential proliferation threat. At this point, the only means at the IAEA's disposal, beyond existing safeguards arrangements, is the Model Additional Protocol.

The United States, as a declared nuclear-weapon state party to the NPT, may exclude the application of IAEA safeguards on its nuclear activities. Under the negotiated Additional Protocol, the United States also has the right to exclude activities and sites of direct national security significance in accordance with its National Security exclusion. This provision is crucial to U.S. acceptance of the Additional Protocol and provides a basis for the protection of U.S. nuclear weapons-related activities, sites, and materials as a declared nuclear power.

The Additional Protocol does not contain any new arms control or disarmament obligations for the United States. While there are increased rights granted to the IAEA for the conduct of inspections in the United States, the administration has assured the committee that the likelihood of an inspection occurring in the United States is very low. Nevertheless, should an inspection under the Additional Protocol be potentially harmful to U.S. national security interests, the United States has the right, through the National Security Exclusion, to prevent such an inspection.

The Committee on Foreign Relations will hold hearings early next year to consider the Additional Protocol. I am confident the Committee will draft a resolution of ratification that will enjoy the support of the senate. Ratification of this treaty and passage of its implementing legislation would be an important demonstration of the U.S. commitment to vigorous and expansive authority for the IAEA in non-nuclear-weapon states.

I am pleased to introduce this legislation today as a statement of the Committee's strong support for aggressive verification capabilities in the global fight against the spread of weapons of mass destruction. I look forward to working closely with my friend, Senator HATCH, Chairman of the Committee on the Judiciary, to construct legislation that protects U.S. national security interests, while strengthening the ability of the IAEA to discover illegal nuclear weapons activities.

the package I send to the desk today contains a letter from the Department of State, the administration's implementing legislation, and a section-by-section analysis, all submitted by the administration.

I ask unanimous consent that the referenced letter and analysis be printed in the RECORD.

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

UNITED STATES DEPARTMENT OF STATE,
*Washington, DC.*

HON. RICHARD G. LUGAR,
*Chairman, Committee on Foreign Relations, United States Senate.*

DEAR MR. CHAIRMAN: On behalf of the President, I am pleased to submit for consideration the Administration's recommended text for legislation to implement the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for Application of Safeguards in the United States of America (U.S.–IAEA Additional Protocol). The U.S.–IAEA Additional Protocol, signed in Vienna on June 12, 1998, is a bilateral treaty that supplements and amends the Agency verification arrangements under the existing Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America of November 18, 1977 (the ''Voluntary Offer''), which entered into force on December 9, 1980.

The U.S.–IAEA Additional Protocol contains a number of provisions that require implementing legislation to give them effect within the United States. These include:

Declarations of U.S. civil nuclear activities and related industry;

Restrictions on disclosure of information; and

International inspections of locations in the United States.

The President, in his letter of transmission dated May 9, 2002, stated that the U.S.–IAEA ''Additional Protocol is in the best interests of the United States. Our acceptance of this agreement will sustain our longstanding record of voluntary acceptance of nuclear safeguards and greatly strengthen our ability to promote universal adoption of the

Model Protocol, a central goal of my nuclear nonproliferation policy. Widespread acceptance of the Protocol will contribute significantly to our nonproliferation objectives as well as strengthen U.S., allied and international security.'' We urge the Senate to give early and favorable consideration to the Protocol and the recommended implementing legislation.

The Office of Management and Budget advises that there is no objection to the submission of this proposal and its enactment, is in accord with the President's program.

We hope this information and the enclosed recommended legislation and sectional analysis are helpful. Please let us know if we can be of further assistance.

Sincerely,

PAUL V. KELLY,
*Assistant Secretary, Legislative Affairs.*

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SECTION-BY-SECTION ANALYSIS OF THE PROPOSED ADDITIONAL PROTOCOL TO THE U.S.-IAEA SAFEGUARDS AGREEMENT IMPLEMENTATION ACT OF 2003

OVERVIEW

The Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States of America (the Additional Protocol) contains a number of provisions that require legislation to give them effect within the United States. These include provisions on the submission to the United States Government of civil nuclear and nuclear-related information by entities identified in Article 2 of the Additional Protocol, and on civil and criminal penalties for failure of such entities to keep or provide such information. The proposed legislation also sets forth procedures for inspections, or ''complementary access,'' by the IAEA at U.S. locations under the Additional Protocol.

The proposed Additional Protocol to the U.S.-IAEA Safeguards Agreement Implementation Act (the Act) contains five miscellaneous sections and six titles. The five miscellaneous sections concern the short title of the Act, the table of contents, Congressional findings, definitions, and a severability clause. Title I provides specific authority for the President to implement and carry out the Act and the Additional Protocol through directing the issuance of necessary regulations. Title II authorizes complementary access at U.S. locations consistent with the Act, and establishes the terms upon which such access may take place. For example, it addresses the notice that must be given to the owner or operator of the inspected location, and the procedures to be followed for seeking access—including obtaining an administrative search warrant where necessary. Title III restricts disclosure of certain information provided pursuant to the Act or the Additional Protocol. Title IV makes it illegal for entities willfully to fail to report information required by regulations pursuant to the Act, and Title V provides for criminal and civil penalties for such violations. Finally, Title VI authorizes appropriation of funds for the Agencies required to carry out responsibilities under the Act.

MISCELLANEOUS SECTIONS

The first part of the Act contains five miscellaneous sections: the short title of the Act, the table of contents, Congressional findings, definitions, and a severability clause. The first two sections are standard provisions. The third section contains seven Congressional findings, which recognize the threat posed by nuclear proliferation, the importance of the Nuclear Non-Proliferation Treaty (NPT), the urgency of strengthening its safeguards system, and the need to implement the U.S.-IAEA Additional Protocol as a means of encouraging other NPT State Parties to accept stricter verification measures. The fourth section provides definitions of key terms as they are used in the Act. In many instances, the same definitions appear in the Additional Protocol, and are therefore cross-referenced. Finally, the fifth section provides that, if any provision of the Act is held invalid, the remainder of the Act shall remain in force. The Administration believes that the Additional Protocol and the Act are fully consistent with the U.S. Constitution, but has included this section as a matter of prudence.

TITLE I—AUTHORIZATION

Title I authorizes the President to implement and carry out the provisions of the Act and the Additional Protocol. This is to be accomplished through an Executive Order designating Agencies to promulgate regulations requiring, inter alia, submission to the United States Government of information specified under Article 2 of the Additional Protocol. This information is necessary for the United States to fulfill its Treaty obligation to provide the IAEA with a broad declaration of its civil nuclear and nuclear-related activities. While the Agencies most likely to issue or amend such regulations are identified in Section 101(a) of the Act, this list is not exclusive.

TITLE II—COMPLEMENTARY ACCESS

Title II sets forth the terms under which complementary access may occur in the United States. Section 201 of the Act makes clear that the IAEA may not conduct complementary access in the United States without the authorization, in accordance with the Act, of the United States Government. It further directs that certain U.S. agencies may not participate in complementary access. These agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, are excluded because their employees may detect violations of regulatory schemes wholly unrelated to the Additional Protocol. Section 201 further requires the number of U.S. representatives be kept to a minimum.

Section 202 addresses procedures for complementary access. For example, Section 202(b) sets forth the requirement for the United States Government to provide ''actual written notice'' of a complementary access request, as soon as possible, to the owner, operator, occupant or agent in charge of the location to be inspected. The notice must contain all appropriate information provided by the IAEA concerning the purpose of the access request, the basis for selection of the location, the activities it intends to carry out, the time and duration of the access, and the identities of inspectors. In addition, Section 202(c) requires IAEA and U.S. personnel participating in the complementary access to show their credentials prior to gaining entry to the inspected location.

Section 202(d)(1) states the general rule that IAEA inspectors may conduct all activities specified under Article 6 of the Additional Protocol for the type of location being inspected. However, there are several exceptions to this rule. First, a warrant issued authorizing complementary access at a location may restrict the activities that inspectors may conduct. Second, as indicated in 202(d)(1), the United States Government has certain rights under the Additional Protocol to limit such access. In addition to its right under Article 1(b) of the

Protocol to deny IAEA access to activities with direct national security significance or to location or information associated with such activities, the United States may manage access in connection with such activities, locations or information. These rights are unilateral and absolute; they are not subject to challenge by or negotiation with the IAEA. Furthermore, Article 7 of the Additional Protocol provides for managed access, under arrangements with the IAEA, to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, or to protect proprietary or commercially sensitive information. Third, Section 202(d)(2) lists a series of items that are specifically excluded from IAEA access. This third set of exceptions, which are mainly directed at protecting commercial information, may not however be enforced if the Additional Protocol requires such disclosure. Section 202(e) requires that all persons participating in complementary access, including U.S. representatives, observe all environmental, health, safety and security regulations applicable for the inspected location.

Section 203 provides the legal framework for IAEA inspectors to gain complementary access to U.S. locations under the Additional Protocol. Section 203(a) sets forth three grounds for such access: warrantless access, where the Fourth Amendment of the U.S. Constitution does not require a warrant; consent to the access by the owner/operator of the location; or, where necessary, obtaining an administrative search warrant. Section 203(a)(2) makes clear that the legislation is intended to impose no warrant requirement beyond that which is required by the Fourth Amendment. Where such a warrant requirement exists, Section 203(a)(1) directs the United States Government first to seek consent to access from the location's owner or operator. The remainder of Section 203 addresses the requirements for obtaining an administrative search warrant, and what such a warrant should contain. Section 203(b)(1) states that the United States Government shall provide to the judge all appropriate information it has received from the IAEA regarding its basis for selecting a particular location for complementary access. A ''judge of the United States'' is defined by the Act to mean a judge or magistrate judge of a district court of the United States. In addition, Section 203(b)(2) requires the United States to submit to the judge a more detailed affidavit showing, among other things, that the Additional Protocol is in force in the United States, applicable to the location to be inspected, and that the complementary access requested is consistent with the provisions of the Additional Protocol, including Article 4 regarding the purpose of the access, and Article 6 regarding its scope. The affidavit must also indicate the anticipated time and duration of the inspection.

Finally, the affidavit must show that the location to be inspected was selected by the IAEA either (i) because there is probable cause, on the basis of specific evidence, to believe that information required to be reported regarding a location pursuant to regulations promulgated under the Act is incorrect or incomplete, and that the location to be accessed contains evidence regarding that violation; or (ii) pursuant to a reasonable general administrative plan developed by the IAEA based upon specific neutral criteria. Selection based on either of these approaches would meet U.S. Constitutional requirements for issuance of a warrant. Section 203 directs that a judge, upon receiving the affidavit, shall promptly issue an administrative search warrant authorizing the requested complementary access. The warrant is to specify the same information as the affidavit, and shall, if known, also include the identities of the IAEA complementary access

team and accompanying U.S. representatives.

TITLE III—CONFIDENTIALITY OF INFORMATION

Title III of the proposed implementing legislation restricts the disclosure of information provided to the United States Government, or to its contractor personnel, pursuant to the Act or the Additional Protocol. For example, Section 301(a) exempts from the Freedom of Information Act (FOIA) disclosure information obtained by the United States Government in implementing the provisions of the Additional Protocol. Thus, information reported to the Government by entities covered by Article 2 of the Additional Protocol, as required by regulation, is not subject to release under the FOIA.

TITLE IV—RECORDKEEPING

Title IV of the proposed implementing legislation prohibits the willful failure of any person to maintain records or submit reports to the United States Government as required by regulations issued under Section 101 of the Act. The prohibitions of Title IV are necessary to implement the Additional Protocol, as the United States is dependent on such reporting to meet its Treaty obligations. A person is defined by the Act very broadly to ensure that all possible entities within the United States are covered.

TITLE V—ENFORCEMENT

Title V of the proposed implementing legislation provides for both civil and criminal penalties for failure to meet the recordkeeping and reporting requirements of Title IV. Violators shall be subject to imprisonment for not more than five years, criminal fines, and civil penalties up to $25,000 per violation. While the Agency issuing the applicable regulations is responsible for their enforcement, an entity subject to civil penalty under this Title may seek judicial review. Title V also provides United States district courts with jurisdiction to specifically enforce Agency orders, either by restraining or compelling action so as to avoid a violation of Title IV.

TITLE VI—AUTHORIZATION OF FUNDS

Title VI of the proposed legislation authorizes the appropriation of such sums as necessary to carry out the purpose of the Act.

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By Mr. DASCHLE (for Mr. KERRY (for himself and Mr. KENNEDY)):

S. 1991. A bill to require the reimbursement of members of the Armed Forces or their family members for the costs of protective body armor purchased by or on behalf of members of the Armed Forces; to the Committee on Armed Services.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD).

• Mr. KERRY. Mr. President, it is the responsibility of the military departments to ''organize, train, and equip,'' the armed forces of the United States. Yet, reports indicate that nearly a quarter of the 130,000 U.S. troops in Iraq still wait for the latest ''Interceptor'' body armor, which is a Kevlar vest with ''small-arms protective inserts''—boron carbide ceramic plates—that protect critical organs from weapons fired by assault rifles like the Ak–47s favored by Iraqi insurgents.

While the Congress has taken measures to provide the latest personal protective gear to all U.S. forces in Iraq and Afghanistan, over the last several months we have heard alarming reports of family members scurrying to buy bullet-proof vests to send to their loved ones in Iraq. Military families are patriotic and selfless. Their devotion is no less than that of those serving in harm's way. They have more than enough to worry about, let alone whether or not they can find and buy the gear that might save their child's life. This is the responsibility of the Department of Defense, plain and simple. There is no excuse for their failure.

On November 19, 2003, acting-Secretary of the Army Les Brownlee admitted to Congress that the administration failed to provide basic equipment, like body armor, to all of our forces in Iraq because, as he put it, ''Events since the end of major combat operations in Iraq have differed from our expectations and have combined to cause problems.'' The Washington Post reported recently that, ''Going into the war in Iraq, the Army decided to outfit only dismounted combat soldiers with the plated vests, which cost about $1,500 each. But when Iraqi insurgents began ambushing convoys and killing clerks as well as combat troops, controversy erupted.'' I ask unanimous consent that the full text of this article be included in the RECORD.

Stories abound of family members, fathers and mothers, wives, and others paying for personal body armor out of their own pockets and shipping the much needed equipment to Iraq. Consider the case of Mimi McCreary of Victorville, CA, whose son Olaf received his bullet-proof vest not from his reserve unit, but from his colleagues on the Clinton, SC, police department. Or consider the 120 members of the National Guard from Marin County, CA, who were unsure of when their body armor would be made available. Instead of letting their neighbors go off to war, the men and women of law enforcement in Marin County donated more than 60 vests so that they would have ''at least some protection.'' Or consider Army Specialist Richard Murphy of Sciota, PA, whose parents, Susan and Joe Werfelman, purchased the ceramic plates missing from their son's vest. According to Murphy's stepfather, he ''called us frantically three or four times on this . . . We said, ''If the Army is not going to protect him, we've got to do it.''

We owe Mr. and Mrs. Werfelman and Mrs. McCreary and every other military family an incredible debt of gratitude. They raised children who believe in this country and are risking all in service to it. The last thing we should ask of them now is to take money out of their own pockets to buy the gear their kids should have had in the first place. But that's exactly what poor planning has led to.

The legislation I introduce today with Senator KENNEDY requires the Department of Defense to reimburse family members who paid money out of their own pockets to provide the personal body armor that the government failed to provide our troops. Lives and blood will always be the cost of war. But it is a dereliction of duty to send anyone into harm's way without basic protective gear, and it is disgusting for family members to have to take this burden of outfitting their loved ones for war. This grateful Nation must make right by those family members and reimburse their expenses in providing these materials to their sons and daughters, husbands and wives. Let families send pictures and letters from home. The Department of Defense should provide the gear.

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

[From the Washington Post, Dec. 4, 2003]

BODY ARMOR SAVES LIVES IN IRAQ

(By Vernon Loeb and Theola Labbé)

BAGHDAD.—Pfc. Gregory Stovall felt the explosion on his face. He was standing in the turret of a Humvee, manning a machine gun, when the roadside bomb went off. At the time, he was guarding a convoy of trucks making a mail run. In an instant, Stovall's face was perforated by shrapnel, the index finger on his right hand was gone, and the middle finger was hanging by a tendon. But the 22-year-old from Brooklyn remembers instinctively reaching for his chest and stomach—''to make sure everything was there,'' he said. It was, encased in a Kevlar vest reinforced by boron carbide ceramic plates that are so hard they can stop AK–47 rounds traveling 2,750 feet per second. Thus, on the morning of Nov. 4, Stovall became the latest in a long line of soldiers serving in Iraq to be saved by the U.S. military's new Interceptor body armor.

This high-tech ''system''—the Kevlar vest and ''small-arms protective inserts,'' which the troops call SAPI plates—is dramatically reducing the kind of torso injuries that have killed soldiers on the battlefield in wars past.

Soldiers will not patrol without the armor—if they can get it. But as of now, there is not enough to go around. Going into the war in Iraq, the Army decided to outfit only dismounted combat soldiers with the plated vests, which cost about $1,500 each. But when Iraqi insurgents began ambushing convoys and killing clerks as well as combat troops, controversy erupted.

Last month, Rep. TED STRICKLAND (D-Ohio) and 102 other House members wrote to Rep. DUNCAN HUNGER ( R-Calif.), chairman of the House Armed Services Committee, to demand hearings on why the Pentagon had been unable to provide all U.S. service members in Iraq with the latest body armor. In the letter, the lawmakers cited reports that soldiers' parents had been purchasing body armor with ceramic plates and sending it to their children in Iraq.

The demand came after Gen. John Abizaid, head of the U.S. Central Command and commander of all military forces in Iraq, told a House Appropriations subcommittee in September that he could not ''answer for the record why we started this war with protective vests that were in short supply.''

With the armor, ''it's the difference between being hit with a fist or with a knife,'' said Ben Gonzalez, chief of the emergency room at the 28th Combat Support Hospital in Baghdad, the largest U.S. Army hospital in the country, which treats the majority of wounded soldiers.

Jonathan Turley, a law professor at George Washington University, began investigating the Army's decision not to equip all troops deploying to Iraq with Interceptor body armor after learning that one of his students, reservist Richard Murphy, was in the

country with a Vietnam-era flak jacket. ''There's been an overwhelming effort to get the military every possible resource,'' Turley said. ''To have such an item denied to troops in Iraq was a terrible oversight.'' Since he began publicizing the lack of body armor, Turley said, he has been deluged with e-mails from people offering to donate body armor to U.S. troops.

Joe Werfelman, the father of Turley's student, said he was dismayed to learn that his son had been sent to Iraq in May without ceramic plates. ''He called us frantically three or four times on this,'' Werfelman said in an interview. ''We said, 'If the Army is not going to protect him, we've got to do it.' '' So Werfelman, of Scotia, Pa., found a New Jersey company that had the ceramic plates in stock, plunked down $660 for two plates and a carrying case, and sent them to his son. ''As far as I know, he's still using the ones that we got him'' he said. ''Some units have the new plates and some units don't.''

At a hearing of the Senate Armed Services Committee on Nov. 19, Sen. JOHN W. WARNER (R-Va.), the committee's chairman, told Acting Army Secretary Les Brownlee that the shortage of body armor in Iraq was ''totally unacceptable.'' ''Now, where was the error—and I say it's an error made in planning—to send those troops to forward-deployed regions, and the conflict in Iraq, without adequate numbers of body armor?'' Warner asked. ''Events since the end of major combat operations in Iraq have differed from our expectations and have combined to cause problems,'' Brownlee said. Before approving the administration's $87 billion supplemental bill for Iraq and Afghanistan, Congress added hundreds of millions of dollars for more body armor, armored Humvees, and other systems to protect soldiers from roadside bombs and ambushes.

Now, three manufacturers are working overtime to produce the 80,000 vests and 160,000 plates required to outfit everyone in Iraq by the end of the year. Assembly lines are producing 25,000 sets a month.

Commanders say the vests are changing the way soldiers think and act in combat. ''I will tell you that the soldiers—to include this one—experience some degree of feeling a little indestructible, particularly in light of the fact that we have seen the equipment work,'' said Lt Col. Henry Arnold, a battalion commander and combat veteran in the 101st Airborne Division in northern Iraq. ''It's a security blanket,'' Stovall said from his hospital bed, awaiting a medevac flight to Germany with his hand bandaged. ''If only they had a glove, I might have my finger, but I'm thankful that I'm here.''

The product of a five-year military research effort aimed at reducing the weight and cost of the plates while increasing their strength, the body armor made its combat debut last year in Afghanistan and was credited with saving more than a dozen lives during Operation Anaconda. The camouflage Kevlar vest, which alone can stop rounds from a 9mm handgun, weighs 8.4 pounds, while each of the plates weighs 4 pounds. At 16.4 pounds, Interceptor body armor is a third lighter than the 25-pound flak jacket from the Vietnam era, but it provides far more protection.

Consider the case of Charlie Company, 1st Battalion, 505th Parachute Infantry Regiment of the 82nd Airborne Division. During a foot patrol in Fallujah in late September, an Iraqi insurgent suddenly emerged from an alleyway and fired an AK–47 at Spec. John Fox from point-blank range. Fox was hit in the stomach as he returned fire, and the blast knocked him off his feet. The bullet hit the middle of three ammunition magazines hanging from the front of his Kevlar vet, igniting tracer rounds and setting off a smoke grenade. A thick gray plume poured from his vest where he lay. His squad mates, having shot and killed the gunman, rushed to his side. ''Am I bleeding? Am I bleeding?'' they recalled Fox asking. They checked and discovered he was unharmed. His body armor had protected him not only from the AK–47 round by also from his own exploding munitions. ''Fox must have been only 10, 15 meters from this guy,'' recalled St. Roger Vasquez. ''And this thing stopped the bullet.''

A month later, two of those who had rushed to Fox's side, Spec. Sean Bargmann and Spec. Joseph Rodriguez, were on a mounted patrol in Fallujah, sitting atop a Humvee, when a powerful roadside bomb exploded just feet away. ''It felt like somebody took a Louisville Slugger to my head,'' Bargmann said. Weeks after the attack, he and Rodriguez still bore the outlines of their armor: The tops of their head, protected by their Kevlar helmets, and their torsos, protected by their body armor, were unscathed. But Bargmann had a deep cut right below the helmet line, and Rodriguez had three scars running down his right cheek and a scar above his left eye.

This often happens with body armor: Lives are saved, but faces, arms and legs are punctured and scarred. Doctors are treating serious wound to the extremities that are creating large numbers of amputees—soldiers who in earlier wars never would have made it off the battlefield. Gonzalez, the doctor at the 28th Combat Support Hospital, is not complaining about the number of amputations. ''The survival rate has increased significantly,'' he said. ''In the past, you'd see head and chest and abdominal injuries. They would die even before they got to me.''

Sgt. Gary Frisbee of the 2nd Armored Cavalry Regiment remembers standing in the turret of a Humvee waiting to die. His vehicle was bringing up the rear during a routine three-vehicle patrol in Sadr City, Baghdad's vast Shiite slum, when hundreds of armed followers of the Shiite cleric Moqtada Sadr opened fire on them with AK–47s and rocket-propelled grenades. ''I knew it was all over; it was just a matter of when,'' he recalled. ''You're bracing yourself, because you're just waiting for the bullet to hit you. The volume of AK fire was unreal, from the roofs, in front of your, and behind you.'' Two of 10 soldiers on the patrol were killed; four were wounded. During the battle, Frisbee felt something hit the back of his Kelvar vest but kept on fighting. When the smoke finally cleared, he pulled out the back plate to see what had happened and found a bullet hole. It has been, as he had thought, just a matter of time. He had been hit—and saved by boron carbide.●

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By Mr. KENNEDY:

S. 1992. A bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate privatization of the medicare program, to improve the medicare prescription drug benefit, to repeal health savings accounts, and for other purposes; to the Committee on Finance.

Mr. KENNEDY. Mr. President, today, along with Senator BOB GRAHAM I am introducing the ''Defense of Medicare and Real Prescription Drug Benefit Act.'' Congressman JOHN DINGELL is introducing companion legislation in the House of Representatives.

The more senior citizens learn about the legislation President Bush has just signed, the more concerned they are. It's a sweetheart deal for big insurance companies and pharmaceutical companies and a raw deal for senior citizens. It's not really a prescription drug bill. It's an anti-Medicare bill.

Our legislation will reverse these destructive policies. Our legislation will protect and preserve Medicare—not turn senior citizens over to the un-tender mercies of HMOs and insurance companies. It will provide prescription drug benefit for senior citizens, without coverage gaps or hidden loopholes. It will protect senior citizens with good retirement coverage from a former employer, and it will protect the poorest of the poor on Medicaid. It will reduce prescription drug costs, by allowing safe importation of drugs from Canada and government negotiations with drug companies for discounts. And it will repeal the program of Health Savings Accounts that help the healthy, wealthy and insurance companies who have contributed heavily to the Republican Party, while harming every family that needs comprehensive, affordable health insurance.

The legislation the President signed is designed to destroy Medicare and turn senior citizens over to the un-tender mercies of HMOs. Our legislation will protect Medicare.

The legislation the President signed provides a skimpy, inadequate, and unreliable drug benefit. Our legislation provides comprehensive drug coverage and assures that senior citizens can get it everywhere in the country without having to join an HMO or other private plan.

The legislation the President signed denies senior citizens the right to get safe drugs at lower prices from Canada and prohibits the government from negotiating with drug companies to get a good deal for senior citizens. This legislation eliminates those special interest, anti-senior provisions.

The legislation the President signed allows unfettered Heath Savings Accounts. These accounts are a bonanza for the healthy, the wealthy, and for favored insurance companies, but they are a disaster for ordinary citizens who need comprehensive coverage and can't afford to put thousands of dollars aside to meet medical needs that insurance is supposed to cover. This legislation repeals this unwise policy.

Senior citizens want prescription drug coverage under Medicare, and they deserve it. Instead, the President and the Republican Party used their control of Congress to attack Medicare itself and force senior citizens into HMOs and other private insurance plans. They want to privatize Medicare, and if they get away with it, they'll try to privatize Social Security too.

Their legislation raises Medicare payments to HMOs so that Medicare can't compete. They use the elderly's own Medicare money to undermine the Medicare program they depend on. According to estimates of the Medicare Actuary, Medicare already pays 16 percent too much for every senior citizen

who joins an HMO or other private insurance plan, because these programs attract the healthiest elderly. IN addition, the Republican legislation raises the base payment to 109 percent of what it costs Medicare to care for an average senior citizen, without even taking into account the health selection bonus the HMOs receive. The total overpayment is 25 percent—a whopping $2,000 per senior citizen. And to top it all off, the legislation establishes a $12 billion slush fund for the new PPO program established by the bill. This isn't competition, its corporate welfare—and senior citizens and the Medicare program are the losers.

Their legislation also creates a vast social experiment—called the ''premium support'' program—using millions of senior citizens as guinea pigs. The sole purpose of the experiment is to raise Medicare premiums so that senior citizens have to give up their Medicare and join an HMO.

Our legislation eliminates these indefensible overpayments and restores parity to the competition between conventional Medicare and private sector alternatives. It repeals the premium support program, so that senior citizens will have choice, not coercion, when they decide whether they prefer conventional Medicare or an HMO.

The assistance with prescription drug costs their program provides is actually very little. Overall, it covers less than 25 percent of the drug expenses faced by the elderly. Senior citizens with $1,000 in drug expenses would pay 86 percent of the cost out of their own pockets. Those with $5,000 in drug expenses would pay 78 percent. When senior citizens' drug costs exceed $2,250, they get no benefits at all until their costs reach $5,100, even though they have to continue to pay premiums. And senior citizens won't necessarily have access to the drugs their doctor's prescribe, if they aren't on the formularies of the private insurance companies that will administer the benefit. A bus ticket to Canada would do more to reduce drug costs for senior citizens than this bill.

Our legislation fills the gaps in the Medicare benefit, so that it truly meets the needs of the elderly and is comparable to the assistance provided under most private insurance plans and that is available to every member of Congress. It assures that the formularies offered by the insurance companies administering the program are not manipulated by the companies to exclude the drugs senior citizens need most.

Nine million senior citizens—almost one of every four—will actually be worse off in their drug coverage under the Bush program than they are today. According to the nonpartisan Congressional Budget Office, almost 3 million senior citizens with good retiree drug coverage through a former employer will lose it as the result of this bill. Six million senior citizens and the disabled who have both Medicare and Medicaid—the poorest of the poor—will actually pay more and have reduced access to the drugs they need. The Bush plan establishes a cruel and demeaning assets test, so that millions of senior citizens with very low incomes are disqualified from the special assistance they need, simply because they have managed to save a little bit for a rainy day, or because they have a car that's worth too much or a burial fund, or personal property like jewelry or furniture.

Our legislation addresses these problems. It ends the discriminatory treatment of senior citizens with private retirement coverage, so that employers do not have an incentive to drop this coverage. It restores benefits to dual eligibles—senior citizens with coverage under both Medicare and Medicaid—so that they will not be made worse off by the new program. It eliminates the assets test.

The Republican bill does nothing about escalating drug prices. Republicans even had the nerve to include a specific prohibition on any role by the Federal government in any negotiation on drug prices. The Congressional Budget Office has estimated that drug prices will actually increase as the result of this bill. No wonder drug company stocks are soaring and senior citizens are concerned. Our legislation will allow reimportation of drugs from Canada—where drug prices are much lower—with stringent controls to assure that any imported drugs meet FDA standards. It will allow the Federal government to negotiate the best possible price for prescription drugs, so that senior citizens and the Medicare program are no longer victimized by exorbitant prices that have little relationship to costs or value.

It's not just seniors who are very concerned. Younger Americans will be hurt too. A separate booby trap in the Republican program includes tax breaks for the healthy and wealthy to buy private policies with very high deductibles that will undermine health insurance for those who are not elderly. These tax breaks, called health savings accounts, encourage people to buy high deductible policies and put money aside in a tax-free savings account. Because the healthy people don't contribute to the cost of regular insurance, premiums skyrocket for people who can't afford thousands of dollars in out-of-pocket costs before their insurance kicks in. The Urban Institute and the American Academy of Actuaries have estimated that premiums for regular insurance policies could increase 60 percent or more. Our bill repeals this unjustified and destructive policy.

The President's signing of the Republican legislation yesterday was the beginning of this fight, not the end. We will never rest until we have protected Medicare and provided senior citizens a prescription drug benefit that truly meets their needs.

I ask unanimous consent that a summary of the ''Defense of Medicare and Real Prescription Drug Benefit Act'' be printed in the RECORD.

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

SUMMARY: PROVISIONS OF THE DEFENSE OF MEDICARE AND REAL MEDICARE PRESCRIPTION DRUG BENEFIT ACT

Title 1: Defense of Medicare

Repeals the premium support demonstration.

Requires risk adjustment between private sector plans and Medicare. Medicare will pay private sector plans an amount reflecting Medicare's cost for covering an individual, rather than paying HMOs a large markup as a result of failing to adjust for the better health of senior citizens who join HMOs.

Repeals PPO slush fund.

Pays all private sector plans an amount equivalent to average Medicare costs, rather than paying an average of 109 percent of Medicare costs, as provided under the current legislation. Phased in over 5 years.

Repeals Medicare spending cap.

Title II: Establishment of Real Medicare Prescription Drug benefit

Elminates coverage gap in 2006–2008, beneficiaries will pay 75 percent coinsurance in the coverage gap. In 2009–2011, they will pay 50 percent. In 2012 and subsequent years, they will pay the same 25 percent copayment as under the initial coverage limit.

Eliminates discriminatory treatment of employer plans.

Allows Medicaid wrap-around for dual eligibles.

Eliminates assets test.

Requires two stand-alone prescription drug plans to avoid federal fallback.

Secretary defines classes and categories under any formula.

Repeals prohibition on Medigap coverage of prescription drugs. Modifies current Medigap policies covering drugs to wrap-around new benefit.

Phases out elimination of state ''clawback.''

Title III: Reduction in Prescription Drug Prices

Allows reimportation from Canada with certification and inspection of Canadian exporters to assure safety of drugs.

Repeals prohibition on government negotiating directly with drug companies for best prices and gives authority for such negotiations.

Title VI: Repeals Health Savings Accounts

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By Mr. WARNER (for himself and Mrs. CLINTON):

S. 1993. A bill to amend title 23, United States Code, to provide a highway safety improvement program that includes incentives ot States to enact primary safety belt laws; to the Committee on Environment and Public Works.

Mr. WARNER. Mr. President, I am pleased to introduce today with my distinguished colleague from New York, Senator CLINTON, the National Highway Safety Act of 2003. It would be our intention in the course of the deliberations next year on the reauthorization or, as we call it, the successive piece of legislation to TEA–21, that this bill, which we introduce today, would be incorporated as an amendment.

As the Congress prepares to consider legislation next year to enact a new 6-year surface transportation law to succeed TEA–21, our foremost responsibility, in my judgment and in the judgment of many, and in the judgment of the President of the United States, must be to improve highway safety for the driving public. Simply by increasing the number of Americans who will buckle up is the most effective step that can be taken to save the their lives and the lives of others. That is the single most important step.

I am privileged to serve on the Environment and Public Works Committee that has now completed its markup of the TEA–21 reauthorization bill. The bill addresses, as it should, highway safety measures, such as how to build safer roads, how to do use new technologies to improve safety. But, statistics show that the greatest measure of safety, again, to drivers, passengers, and possibly third parties not connected with the vehicle, is through the use of a seatbelt. It is remarkable, the lives that have been saved through the use of this simple device. I have, through my career in the Senate—I say with modesty—been associated with, and indeed I think in the forefront of, trying to move forward on seatbelt legislation. I will not belabor what this humble Senator has done working with others through the years, but we are very proud today that America has about a 79 percent use rate of seatbelts. That has been translated into the saving of tens of thousands of lives and injuries in automobile accidents.

Those are the facts. Are we just going to have a standstill, or are we going to move forward? Senator CLINTON and I think we should move forward with this somewhat new approach. I will address the technical aspects as we go along.

We have debated the benefits of seatbelt use on many occasions in this body, and elsewhere across America. And whether it is in the town forums we conduct, town meetings, or here on the floor of the Senate, there is always that individual who comes back: Don't tell me what I have to do. What does it matter to you, JOHN WARNER—or to any other colleague with whom I am privileged to serve—what does it matter to you whether I buckle up?

Well, let's take a look. No one disputes that the absence of a seatbelt causes more serious loss of life and injury and, to some extent, crashes. The statistics show that with the impact associated with the crash, to the extent the driver can maintain, as best he can control of the vehicle in those fatal microseconds, often fatal, perhaps the severity of the crash, and perhaps the loss of life can be reduced by the use of a safety belt—simply said.

Accidents involving unbelted drivers result in a significant cost to the wallet, out of your pocket. Many people are rushed from the accident scene to various emergency facilities. All of that has the initial cost of the law enforcement that responds, the rescue squads that respond, and eventually the emergency room or whatever medical facility you might have the good fortune to be taken to, to hopefully save you your life. That isn't free. There is a cost. Maybe it is a hidden cost in the budgets of the towns and the communities and the States, but there is definitely a cost. Regrettably, a number of persons who suffer those types of injuries are uninsured. Again, the cost often devolves down on the good old hard-working taxpayers; in most instances, the taxpayers who buckle up.

This also is rather interesting and fascinating. When an accident happens, regrettably, on our roads and highways across this great Nation, we try to refrain from rubbernecking. Nevertheless, chances are that we take a glance. More often than not, the accident with the combined slowdown of those passing the accident causes significant congestion for some considerable portion of time. Either the lane in which we are traveling moves very slowly because of the accident or, indeed, we come to a standstill, as often is the case when a lane is closed to clear an accident. That standstill frequently is necessitated because of the severity of the injuries experienced in that accident. It takes the response team longer in their carefully trained steps to extricate the injured person, to give the initial treatment, and then to carefully transport that individual, if necessary, to a medical facility. That takes time. That road is backed up.

That is lost time for your mission on the road, be it for business, family, or pleasure. That is lost time and productivity. Behind you often are trucks and other vehicles involved in commerce. That is lost time and delay due to the seriousness occasioned by injuries and accidents where there has been the lack of use of seatbelts. It is as simple as that.

The legislation Senator CLINTON and I are introducing today will take an important step forward for the States to adopt either a primary safety belt law, or take steps of their own devising to meet a 90 percent seat belt use rate—not the Warner-Clinton bill or the legislative measure put forth by the administration upon which Senator CLINTON and I draw for concepts of certain portions. The States can decide for themselves how they achieve a 90-percent goal of the use of seatbelts in their respective States. That is the purpose of this legislation—to move every State to a 90-percent use rate for safety belts.

In a letter dated November 12, 2003, to Chairman INHOFE of the Committee on the Environment and Public Works, on which I am privileged to serve, Secretary Mineta states:

> President Bush and I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries.

That is explicit and clear. The Secretary goes on to say:

> The surest way for a State to increase safety belt usage is through the passage of a primary safety belt law.

I have had this debate with Governors, former Governors, even in this Chamber with former Governors. I think they would tell you that a primary safety belt law is a tough piece of State legislation to pass solely on its own. Frankly, it needs the impetus of Uncle Sam, the impetus of the Congress of the United States to move that process in the States forward, so the local politicians can shake their fist saying, it is Washington that has done it again—more regulation, more direction—you know the arguments. But I think quietly in the hearts of those State legislatures is the thought that we will improve safety in my State. We will improve the chance of survivability on the roads in my State. So that is why we are here today. I ask unanimous consent that the full text of Secretary Mineta's letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. As provided in our legislation, the Warner-Clinton bill, States can increase seatbelt use either by enacting, as I said, a primary seatbelt law—everybody knows what a primary seatbelt law is and how it works. It means a law enforcement officer can literally stop a vehicle if they observe that the individual is not wearing his or her seatbelt. It is as simple as that. But a State, if they decide not to enact a primary safety belt law, can, by implementing their own strategies, whatever they may be—and there is a lot of innovation out in the States—that would result in a 90-percent safety belt use rate. So that is a challenge to the States.

The current national belt use, as I said, is 79 percent. But many States—those that have the primary law are sometimes at 90, or even above 90, but those that do not have the primary seatbelt law are down sometimes in the 60 percentile. It is the weight of the primary States that carries the percentile and brings it up to 79 from those States that don't have an effective law. States with their primary safety belt law have the greatest success for drivers wearing seatbelts.

On an average, States with the primary seatbelt law have a 10 to 15 percent higher seatbelt use compared to those with a secondary system. This demonstrates that secondary seatbelt

laws are far more limited in their effectiveness than a primary law.

Essentially, the secondary laws say that if a law enforcement officer has cause other than a perceived or actual seatbelt violation—namely, the driver didn't have it buckled—if they have cause to stop that car, for example, for a speeding offense or a reckless driving offense or indeed an accident and they observed there has been no use of the seatbelt, then in the course of proceeding to enforce the several laws of the State as regards speeding or reckless driving, or whatever the case may be, they can add a second penalty to address the absence of the use of the seatbelt in that State.

Drivers are gamblers. They say: Oh, well, don't worry, I will not buckle up. State law doesn't require it. Unless they stop me—and they are not going to stop me today. It is that gambling attitude that, more often than not, will cause an accident. Then it is too late.

So we come forward today to build on our national programs. We are building on what we did in TEA–21. I was privileged to be on the committee. I was chairman of the subcommittee 6 years ago. I worked with Senator CHAFEE, who was chairman of the full committee, and we drove hard to make progress with the seatbelt laws, and we did it. We basically put aside a very considerable sum of money to encourage States—again, using their own devices—to increase uses. As a direct consequence of what we did in TEA–21, there has been an 11 percent increase in these 6 years in the use of seatbelts.

Sadly, traffic deaths in 2002 rose to the highest level in over a decade. It is astonishing. Of the nearly 43,000 people killed on our highways, over half were not wearing their seatbelts. That is according to the National Highway Traffic Safety Administration. And 9,200 of these deaths might have been prevented if the safety belt had been used.

Those are alarming statistics. Automobile crashes are the leading cause of death for Americans age 2 to 34. Stop to think of that: age 2, that means a child; that means a parent neglected to buckle up a child. Automobile crashes are the leading cause of death for Americans age 2 to 34. That is our Nation's youth. Do we have a higher calling in the Congress of the United States than to do everything we can to foster the dreams and ambitions and the productivity of our Nation's youth? I think not. And this is one of the ways.

Last year, 6 out of 10 children who died in car crashes did not have the belt on—6 out of 10; that is over half. I plead with colleagues to join with me, join with the President who has taken this initiative.

My primary responsibility in the Senate—and this is one of the reasons I got interested in this subject—is the welfare of the men and women in the Armed Forces. I say to colleagues, again, the statistics are tragic. Traffic fatalities are the leading non-combat cause of death for our soldiers, sailors, airmen, and marines. They are in that high-risk age category, 18 to 35.

Someone even took a look at the statistics, the total of the fatalities last year, and said that represents in deaths approximately the size of the average U.S. Army battalion. That is several companies and maybe a reinforced element. Just think, that is the magnitude in one category of those who serve our United States, the men and women in the Armed Forces.

I cannot think of any reason why we all cannot join behind this effort. That alone is a driving impetus for this Senator.

The time is long overdue for a national policy to strengthen seatbelt use rates. I said a national policy, and that is what this bill represents, either through States enacting a primary seatbelt law or giving far greater attention to public awareness programs that result in more drivers and passengers wearing safety belts. Our goal is 90 percent—90 percent.

I have been privileged to serve on this committee 17 years, and I, together with many others, notably my dear friend and late chairman, Senator Chafee, addressed this issue. Our committee is rich in the history of focusing revenue from the highway trust fund on effective safety programs. It goes back through many chairmen and members of the committee.

With jurisdiction over the largest share of the highway trust fund, our committee has had the vision to tackle important national safety problems. Regrettably, I report to you that the recent markup of the committee on the proposed successor to the TEA–21 legislation, which we will take up next year, does provide more funding to help build safer roads—that is a step forward—but it does not have, in my judgment, that provision which represents a step up from what we did in TEA–21, that provision that would represent a recognition for the President's initiative. He has taken a decidedly strong initiative to increase the use of seatbelts. It is absent from the bill, and that is why, I say respectfully to Chairman INHOFE and others on that committee, we need a provision to strengthen and to move forward the position of the Congress on the issue of increased use of safety belts. That is the purpose of this legislation.

It is just unfortunate, but those with reckless intent quickly disregard responsible behavior and drive unbelted at excessive speeds and many times with the use of alcohol. So no increased dollars for improved road engineering, which is in this bill, can defy in many instances and the type of personal conduct that results in reckless behavior. It is as simple as that.

Our automobiles now come equipped with crash avoidance technologies and are more crashworthy than ever before, but these advances are only part of the solution.

In repeated testimony before the Environment and Public Works Committee, from the administration, our States, safety groups, and the highway insurance industry, we are told that three main causes of traffic deaths and injuries are unbelted drivers, speed, and alcohol.

The formula we have devised in this legislation does have a reduction in the amount a State receives under this proposed bill that we will consider next year when they fail to achieve the 90 percent safety belt use rate. It is as simple as that. But the formula is patterned directly after the law that is on the books now with respect to the .08 legal blood alcohol content level.

The net effect of this legislation is simply to recognize we are asking that the same type of sanction policy with regard to one of the three major causes of death—alcohol—be equated to a second cause of death and injury, and that is absence of the use of seatbelts, bringing into parallel two of the three principal causes of death and injury on today's highways.

The administration put forward an innovative safety belt program, as I said, under the leadership of the President that was a major component of their new core transportation program, the Highway Safety Improvement Program. Regrettably, this recommendation is not included in the bill that will come before my committee next year as a consequence of the markup seeking reauthorization of TEA–21.

The proposed reauthorization bill also does not include the current program, the Safety Belt Incentive Grant program, that we even had in the previous highway bill, of which I was primarily one of the authors. Not only are we not going forward, but in a sense we are stepping backwards. I just cannot understand how we can, as a body, not observe our responsibility to do what we can to provide the necessary incentive to the States to take these steps.

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. 1993

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Highway Safety Act of 2003''.

**SEC. 2. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

(a) SAFETY IMPROVEMENT.—

(1) IN GENERAL.—Section 148 of title 23, United States Code, is amended to read as follows:

**''§ 148. Highway safety improvement program**

''(a) DEFINITIONS.—In this section:

''(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means the program carried out under this section.

''(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means a project described in the State strategic highway safety plan that—

''(i) corrects or improves a hazardous road location or feature; or

''(ii) addresses a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes a project for—

''(i) an intersection safety improvement;

''(ii) pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);

''(iii) installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians;

''(iv) installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents;

''(v) an improvement for pedestrian or bicyclist safety;

''(vi)(I) construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings;

''(II) construction of a railway-highway crossing safety feature; or

''(III) the conduct of a model traffic enforcement activity at a railway-highway crossing;

''(vii) construction of a traffic calming feature;

''(viii) elimination of a roadside obstacle;

''(ix) improvement of highway signage and pavement markings;

''(x) installation of a priority control system for emergency vehicles at signalized intersections;

''(xi) installation of a traffic control or other warning device at a location with high accident potential;

''(xii) safety-conscious planning;

''(xiii) improvement in the collection and analysis of crash data;

''(xiv) planning, equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety;

''(xv) installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators;

''(xvi) the addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife; or

''(xvii) installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

''(3) PRIMARY SAFETY BELT LAW.—The term 'primary safety belt law' means a law that authorizes a law enforcement officer to issue a citation for the failure of the operator of, or any passenger in, a motor vehicle to wear a safety belt as required by State law, based solely on that failure and without regard to whether there is any other violation of law.

''(4) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to—

''(i) promote the awareness of the public and educate the public concerning highway safety matters; or

''(ii) enforce highway safety laws.

''(5) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

''(6) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes in existence as of the date of enactment of this section;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(f).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To receive funds under this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems; and

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A), identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all roads and bridges on the Federal-aid system;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all roads and bridges on the Federal-aid system; and

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, and pedestrians;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under this section to carry out—

''(A) any highway safety improvement project on any—

''(i) road or bridge on the Federal-aid system; or

''(ii) publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), for other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related accidents;

''(iv) mitigating the consequences of roadway-related accidents; and

''(v) reducing the occurrences of roadway-railroad grade crossing accidents.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—The Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

''(h) USE OF FUNDS.—

''(1) PROJECTS UNDER SECTION 402.—For fiscal year 2005 and each fiscal year thereafter, 10 percent of the funds made available to a State under this section shall be obligated for projects under section 402, unless by October 1 of the fiscal year, the State—

''(A) has in effect a primary safety belt law; or

''(B) demonstrates that the safety belt use rate in the State is at least 90 percent.

''(2) WITHHOLDING.—

''(A) IN GENERAL.—For fiscal year 2007, the Secretary shall withhold 2 percent, and for each fiscal year thereafter, the Secretary shall withhold 4 percent, of the funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b) and section 144 if, by October 1 of that fiscal year, the State does not—

''(i) have in effect a primary safety belt law; or

''(ii) demonstrate that the safety belt use rate in the State is at least 90 percent.

''(B) RESTORATION.—If, within 3 years after the date on which funds are withheld from a State under subparagraph (A), the State has in effect a primary safety belt law or has demonstrated that the safety belt use rate in the State is at least 90 percent, the apportionment of the State shall be increased by the amount withheld.

''(C) LAPSE.—If, within 3 years after the date on which funds are withheld from a State under subparagraph (A), the State does not have in effect a primary safety belt law or has not demonstrated that the safety belt use rate in the State is at least 90 percent, the amount withheld shall lapse.''.

(2) ALLOCATIONS OF APPORTIONED FUNDS.—Section 133(d) of title 23, United States Code, is amended—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(C) in paragraph (2) (as redesignated by subparagraph (B))—

(i) in the first sentence of subparagraph (A)—

(I) by striking ''subparagraphs (C) and (D)'' and inserting ''subparagraph (C)''; and

(II) by striking ''80 percent'' and inserting ''90 percent'';

(ii) by striking subparagraph (C);

(iii) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(iv) in subparagraph (C) (as redesignated by clause (iii)), by adding a period at the end; and

(D) in paragraph (4)(A) (as redesignated by subparagraph (B)), by striking ''paragraph (2)'' and inserting ''paragraph (1)''.

(3) CONFORMING AMENDMENTS.—

(A) Chapter 1 of title 23, United States Code, is amended by striking the item relating to section 148 and inserting the following:

''148. Highway safety improvement program.''.

(b) APPORTIONMENT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS.—Section 104(b) of title 23, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting after ''Improvement program,'' the following: ''the highway safety improvement program,''; and

(2) by adding at the end the following:

''(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

''(i) 25 percent of the apportionments in the ratio that—

''(I) the total lane miles of Federal-aid highways in each State; bears to

''(II) the total lane miles of Federal-aid highways in all States.

''(ii) 40 percent of the apportionments in the ratio that—

''(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

''(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

''(iii) 35 percent of the apportionments in the ratio that—

''(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

''(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.''.

(c) ELIMINATION OF HAZARDS RELATING TO HIGHWAY FACILITIES.—

(1) FUNDS FOR PROTECTIVE DEVICES.—Section 130(e) of title 23, United States Code, is amended—

(A) in the heading, by striking ''PROTECTIVE DEVICES'' and inserting ''RAILWAY-HIGHWAY CROSSINGS'';

(B) by striking the first sentence and inserting the following:

''(1) IN GENERAL.—For each fiscal year, at least $200,000,000 of the funds authorized and expended under section 148 shall be available for the elimination of hazards and the installation of protective devices at railway-highway crossings.''; and

(C) by striking ''Sums authorized'' and inserting the following:

''(2) OBLIGATION.—Sums authorized''.

(2) BIENNIAL REPORTS TO CONGRESS.—Section 130(g) of title 23, United States Code, is amended in the third sentence—

(A) by inserting ''and the Committee on Commerce, Science, and Transportation,'' after ''Public Works''; and

(B) by striking ''not later than April 1 of each year'' and inserting ''every other year''.

(3) EXPENDITURE OF FUNDS; APPORTIONMENT.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

''(k) EXPENDITURE OF FUNDS; APPORTIONMENT.—Funds made available to carry out this section shall be—

''(1) available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g); and

''(2) apportioned in accordance with section 104(b)(5).''.

(d) TRANSITION.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), to qualify for funding under section 148 of title 23, United States Code (as amended by subsection (a)), a State shall develop and implement a State strategic highway safety plan as required by subsection (c) of that section not later than October 1 of the second fiscal year after the date of enactment of this Act.

(2) INTERIM PERIOD.—

(A) IN GENERAL.—Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(B) NO STRATEGIC HIGHWAY SAFETY PLAN.—If a State has not developed a strategic highway safety plan by October 1 of the second fiscal year after the date of enactment of this Act, but demonstrates to the satisfaction of the Secretary that progress is being made toward developing and implementing such a plan, the Secretary shall continue to apportion funds for 1 additional fiscal year for the highway safety improvement program under section 148 of title 23, United States Code, to the State, and the State may continue to obligate funds apportioned to the State under this section for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(C) PENALTY.—If a State has not adopted a strategic highway safety plan by the date that is 2 years after the date of enactment of this Act, funds made available to the State under section 1101(6) shall be redistributed to other States in accordance with section 104(b) of title 23, United States Code.

SECRETARY OF TRANSPORTATION
*Washington, DC, November 12, 2003.*

Hon. JAMES INHOFE,
*Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: With almost 43,000 people dying every year on our nation's highway, it is imperative that we do everything in our power to promote a safer transportation system. The Bush Administration's proposal to reauthorize surface transportation programs, the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA), offers several bold and innovative approaches to address this crisis.

President Bush and I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries. As a result, SAFETEA's new core highway safety program provides States with powerful funding incentives to increase the percentage of Americans who buckle up every time they get in an automobile. Every percentage point increase in the national safety belt usage rate saves hundreds of lives and millions of dollars in lost productivity.

Empirical evidence shows that the surest way for a State to increase safety belt usage is through the passage of a primary safety belt law. States with primary belt laws have safety belt usage rates that are on average eight percentage points higher than States with secondary laws. Recognizing that States may have other innovative methods to achieve higher rates of belt use, SAFETEA also rewards States that achieve 90% safety belt usage rates even if a primary safety belt law is not enacted. I urge you to consider these approaches as your Committee marks up reauthorization legislation.

While safety belts are obviously critical to reducing highway fatalities, so too is a data

driven approach to providing safety. Every State faces its own unique safety challenges, and every State must be given broad funding flexibility to solve those challenges. This is a central theme of SAFETEA, which aims to provide States the ability to use scarce resources to meet their own highest priority needs. Such flexibility is essential for States to maximize their resources, including the funds available under a new core highway safety program.

I look forward to working with you on these critically important safety issues as development of a surface transportation reauthorization bill progresses.

Sincerely yours,

NORMAN Y. MINETA.

Mr. DEWINE. Mr. President, let me first congratulate my colleague from Virginia, Senator WARNER, for the very fine statement he just made a moment ago about the bill that he and Senator CLINTON are introducing with regard to the primary seatbelt law. This is something I have been interested in for some time. I congratulate them for their very fine bill and Senator WARNER's very fine statement. He is absolutely correct. If we are serious about saving lives on our highways in this country, there really is nothing more important that we can do than to get our fellow citizens to buckle up.

We have made great progress in this area, but the fact that many of our States do not have a primary seatbelt law on the books costs us thousands and thousands of lives each year. As my colleague from Virginia so eloquently stated in this Chamber a few minutes ago, all the experts—everyone who knows anything about highway safety—will tell you that the most important thing that we could do and the easiest thing we could do would be to have every State of the Union tomorrow, instantly, have a primary seatbelt safety law.

That simply means if law enforcement, instead of having to wait for another type of violation before they could cite someone for not wearing a seatbelt could cite someone directly for not using a seatbelt, the use of seatbelts would dramatically increase in this country. That is what has happened in every single State that has had these laws enacted. Seatbelt use dramatically goes up almost overnight.

We know there is an inverse relationship between the use of seatbelts and auto fatalities. Thousands and thousands of Americans' lives would be saved every single year. I wanted to come to the floor this afternoon after I listened to my colleague's speech in my office. I wanted to thank him. He has been a real leader in the area of highway safety and this is certainly one more example of his leadership.

When we take up the highway safety bill next year, there are a number of highway safety initiatives on which I have been working. I intend to bring them to the floor and talk about them and offer them as amendments, offer them as initiatives. Frankly, there is nothing as important as what my colleague from Virginia has suggested.

I hope the Senate will take this very seriously. This is a great opportunity we will have to save thousands and thousands of lives every year. So I salute my colleague from Virginia.

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By Mr. DASCHLE (for Mr. FEINGOLD):

S. 1994. A bill to amend part D of title XVIII of the Social security Act to strike the language that prohibits the Secretary of Health and Human Services from negotiating prices for prescription drugs furnished under the Medicare program; to the Committee on Finance.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. FEINGOLD. Mr. President, today I am introducing a bill that will fix one of the fundamental flaws in the new Medicare prescription drug benefit. The ''Efficiency in Government Health Care Spending Act'' will remove language included in the new benefit that prohibits the Medicare program from negotiating prescription drug prices with manufacturers. The new Medicare prescription drug benefit does far too little to bring down the prices of prescription drugs. In fact, it actually takes away one of the best tools the Medicare program could use in bringing down prescription drug prices by denying the government the ability to negotiate price discounts on behalf of Medicare beneficiaries. My bill will allow the Federal Government to take advantage of the purchasing power of the Medicare program Medicare, saving millions of taxpayers' dollars while reducing the costs of prescription drugs for Medicare beneficiaries.

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

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

S. 1994

*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 ''Efficiency in Government Health Care Spending Act''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Prohibiting the Federal Government from negotiating prescription drug prices with manufacturers fails to take advantage of the purchasing power of the Medicare program.

(2) Negotiating prescription drug prices can reduce the costs of prescription drugs for both the Medicare program and taxpayers.

(3) A 2002 study by the inspector general of the Department of Health and Human Services found that—

(A) both the Medicare program and the beneficiaries of the Medicare program continually pay too much for medical equipment and medical supplies; and

(B) if the Medicare program paid the same prices for 16 health care supplies as the Department of Veterans Affairs, which directly negotiates prices with manufacturers, pays for those supplies, the Federal Government could save $958,000,000 each year.

**SEC. 3. ELIMINATION OF PROHIBITION OF NEGOTIATION OF PRICES.**

(a) REPEAL OF NONINTERFERENCE PROVISION.—

(1) IN GENERAL.—Subsection (i) of section 1860D–11 of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is repealed.

(2) CONFORMING AMENDMENT.—Subsection (j) of section 1860D–11 of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is redesignated as subsection (i).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.●

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By Mr. DASCHLE (for Mr. FEINGOLD):

S. 1995. A bill to amend title XVIII of the Social Security Act to repeal the MA Regional Plan Stabilization Fund; to the Committee on Finance.

● Mr. FEINGOLD. Mr. President, today I am introducing a bill that will remove the multi-billion dollar ''stabilization fund'' from the new Medicare prescription drug benefit. This stabilization fund is in essence a slush fund that gives billions of dollars to private insurance companies. This is not an efficient use of taxpayers' dollars. In fact, it's not clear why it's even necessary. If private managed care plans are successful in bring costs down, as backers of the new Medicare bill expect, and if seniors supposedly want to choose private plans, as backers of the new Medicare bill believe, then why should American taxpayers pay private companies more money to get more people to enroll in them?

We should not be subsidizing private health insurance companies in the name of Medicare reform. It is fiscally irresponsible, in a time of record deficits, to use taxpayers' dollars as a giveaway to private insurance companies. By removing this multi-billion slush fund, my bill will save the American taxpayers billions of dollars. Many analysts predict that the new Medicare prescription drug benefit will surpass the $400 billion budgeted for it. We need to look carefully at how we spend Medicare dollars, so that we can ensure that the program remains solvent for future generations.

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

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

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

S. 1995

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

**SECTION 1. REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.**

(a) PURPOSE OF SECTION.—The purpose of this section is to reduce the Federal budget deficit and to more efficiently use taxpayer dollars in health care spending.

(b) REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.—Section 1858 of the Social Security Act, as added by section 221(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively; and

(3) in subsection (e), as so redesignated, by striking ''subject to subsection (e),''.

(c) CONFORMING AMENDMENT.—Section 1851(i)(2) of the Social Security Act (42 U.S.C. 1395w–21(i)(2)), as amended by section 221(d)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking''1858(h)'' and inserting ''1858(g)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.●

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By Mr. DASCHLE:

S. 1996. A bill to enhance and provide to the Oglada Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, today I am introducing the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act. I have worked with the leadership of the Oglala Sioux Tribe to develop this legislation, which is intended to benefit the Lakota people by restoring critical water resources and promoting economic development on the Pine Ridge Indian Reservation.

The Angostura Unit of the Bureau of Reclamation was first authorized by Congress under the Water Conservation and Utilization Act of 1939, and later continued under the Flood Control Act of 1944, otherwise known as the Pick-Sloan Missouri River Basin Project. The program consisted primarily of building the six mainstem dams on the Missouri River, to be operated by the U.S. Army Corps of Engineers, along with several Bureau-operated irrigation and water development projects. The Angostura Unit was designed to provide irrigation to 12,218 acres of farm and ranch land in the Angostura Irrigation District, as well as flood control, fish, and wildlife benefits.

Tribes in South Dakota existed long before the creation of the Bureau of Reclamation or the implementation of the water development projects in South Dakota today. Tribes therefore have a vested interest in the operation of these projects. While the projects have been helpful in meeting their authorized goals, they also contribute to adverse economic and environmental conditions on tribal reservations. In particular, the Missouri River reservoirs managed by the Corps led to the taking of thousands of acres of fertile river land from Indian tribes, and with that taking, the tribes lost valuable natural resources.

Federal agencies were directed through subsequent acts to provide for the rehabilitation of the lost fish and wildlife habitat and to generally improve conditions on the reservations, but results were slow in coming, and often never materialized. Legislation was enacted several years ago to finally address some of these issues, but much more remains to be done before South Dakota's tribes realize the benefits that Bureau of Reclamation and Corps projects have provided other parts of the state.

In addition to the irrigation benefits the Angostura Unit provides to ranchers and agricultural producers in the area, a substantial recreation industry has developed around the reservoir, including boating and fishing. However, members of the Oglala Sioux on the Pine Ridge Indian Reservation have not seen equal economic benefits from the Angostura Unit as those experienced from the recreation and irrigation in Fall River County. The Cheyenne River forms the northern boundary of the reservation, which is just 20 miles downstream from the reservoir, and is an important natural resource for the tribe. The river is essential to the survival of riparian vegetation, traditional medicinal plants, fish, and wildlife habitat. The impoundment of water in the reservoir has curbed the Cheyenne River's natural flow, and water quality is reduced. This, coupled with the worst drought the region has seen in a decade, severely affects water resources on the reservation.

The Oglala Sioux Tribe's leadership has long had a desire to address these problems, and this legislation is an important manifestation of their effort. During revision of the Angostura Unit's water management plan in 2002, the Bureau of Reclamation considered a variety of alternatives for future operations, but the tribe felt their concerns about the economic and environmental effects the reservoir has on the reservation were not adequately addressed. One alternative considered by the Bureau of Reclamation during this review would return natural flows to the Cheyenne River, and would provide more water downstream for the tribe and would improve reservation conditions. The Bureau took a different approach, however—one that calls for improved irrigation operations and a more efficient distribution of water resources in the irrigation district. These improvements would help free up additional water resources and hopefully lead to improved conditions on the Cheyenne River that would benefit the tribe.

The Angostura Irrigation Project Rehabilitation and Development Act would authorize the efficiency improvements proposed by the Bureau of Reclamation, benefitting both existing water users and the tribe. The legislation also would authorize the creation of a trust fund to compensate the tribe for the economic impacts and lost natural resources caused by the operation of the Angostura Unit. This trust fund will be used by the tribe to promote economic development, improve infrastructure, and enhance the education, health, and general welfare of the Oglala Lakota people. This dual track will both help ensure continued and efficient operation of the Angostura Unit and the Angostura Irrigation District, while helping to mitigate the problems facing the Oglala Sioux Tribe, and providing the tribe with the natural and financial resources it needs to plan for the future and improve the quality of life for all tribal members.

This legislation is just one small, yet important, step toward ensuring that U.S. natural resource policies are fair to American Indians, and I look forward to working with my colleagues to enact it.

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. 1996

*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 ''Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) Congress approved the Pick-Sloan Missouri River basin program by passing the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (33 U.S.C. 701–1 et seq.)—

(A) to promote the economic development of the United States;

(B) to provide for irrigation in regions north of Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Angostura Unit—

(A) is a component of the Pick-Sloan program; and

(B) provides for—

(i) irrigation of 12,218 acres of productive farm land in the State; and

(ii) substantial recreation and fish and wildlife benefits;

(3) the Commissioner of Reclamation has determined that—

(A) the national economic development benefits from irrigation at the Angostura Unit total approximately $3,410,000 annually; and

(B) the national economic development benefits of recreation at Angostura Reservoir total approximately $7,100,000 annually;

(4) the Angostura Unit impounds the Cheyenne River 20 miles upstream of the Pine Ridge Indian Reservation in the State;

(5)(A) the Reservation experiences extremely high rates of unemployment and poverty; and

(B) there is a need for economic development on the Reservation;

(6) the national economic development benefits of the Angostura Unit do not extend to the Reservation;

(7) the Angostura Unit may be associated with negative affects on water quality and riparian vegetation in the Cheyenne River on the Reservation;

(8) rehabilitation of the irrigation facilities at the Angostura Unit would—

(A) enhance the national economic development benefits of the Angostura Unit; and

(B) result in improved water efficiency and environmental restoration benefits on the Reservation; and

(9) the establishment of a trust fund for the Oglala Sioux Tribe would—

(A) produce economic development benefits for the Reservation comparable to the benefits produced at the Angostura Unit; and

(B) provide resources that are necessary for restoration of the Cheyenne River corridor on the Reservation.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ANGOSTURA UNIT.—The term ''Angostura Unit'' means the irrigation unit of the Angostura irrigation project developed under the Act of August 11, 1939 (16 U.S.C. 590y et seq.).

(2) FUND.—The term ''Fund'' means the Oglala Sioux Tribal Development Trust Fund established by section 201(a).

(3) PICK-SLOAN PROGRAM.—The term ''Pick-Sloan program'' means the Pick-Sloan Missouri River basin program approved under the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (33 U.S.C. 701–1 et seq.).

(4) PLAN.—The term ''plan'' means the development plan developed by the Tribe under section 201(f).

(5) RESERVATION.—The term ''Reservation'' means the Pine Ridge Indian Reservation in the State.

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

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

(8) TRIBAL COUNCIL.—The term ''Tribal Council'' means the governing body of the Tribe.

(9) TRIBE.—The term ''Tribe'' means the Oglala Sioux Tribe of South Dakota.

**TITLE I—REHABILITATION**

**SEC. 101. REHABILITATION OF FACILITIES AT ANGOSTURA UNIT.**

The Secretary may carry out the rehabilitation and improvement of the facilities at the Angostura Project described in the report entitled ''Angostura Unit Contract Negotiation and Water Management Final Environmental Impact Statement'', dated August 2002.

**SEC. 102. DELIVERY OF WATER TO PINE RIDGE INDIAN RESERVATION.**

The Secretary shall provide for—

(1) to the maximum extent practicable, the delivery of water saved through the rehabilitation and improvement of the facilities of the Angostura Unit to the Pine Ridge Indian Reservation; and

(2) the use of that water for purposes of environmental restoration on the Pine Ridge Indian Reservation.

**SEC. 103. EFFECT ON OTHER LAW.**

Nothing in this title affects—

(1) any reserved water rights or other rights of the Tribe;

(2) any service or program to which, in accordance with Federal law, the Tribe, or an individual member of the Tribe, is entitled; or

(3) any water rights in existence on the date of enactment of this Act held by any person or entity.

**SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.

**TITLE II—DEVELOPMENT**

**SEC. 201. OGLALA SIOUX TRIBAL DEVELOPMENT TRUST FUND.**

(a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST FUND.—There is established in the Treasury of the United States a fund to be known as the ''Oglala Sioux Tribal Development Trust Fund'', consisting of any amounts deposited in the Fund under this title.

(b) FUNDING.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit in the Fund—

(1) such sums as the Secretary of the Treasury, in consultation with the Secretary, the Secretary of Health and Human Services, and the Tribal Council, are necessary to carry out development under this title; and

(2) the amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if that amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(c) INVESTMENT OF TRUST FUND.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals.

(2) ACQUISITION OF OBLIGATIONS.—Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(3) INTEREST.—The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) WITHDRAWAL OF INTEREST.—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall transfer the aggregate amount of interest deposited into the Fund for the fiscal year to the Secretary for use in accordance with paragraph (3).

(2) AVAILABILITY.—Each amount transferred under paragraph (1) shall be available without fiscal year limitation.

(3) PAYMENTS TO TRIBE.—

(A) IN GENERAL.—The Secretary shall use the amounts transferred under paragraph (1) only for the purpose of making payments to the Tribe, as such payments are requested by the Tribe pursuant to tribal resolution.

(B) LIMITATION.—Payments may be made by the Secretary of the Interior under subparagraph (A) only after the Tribe has adopted a plan under subsection (f).

(C) USE OF PAYMENTS BY TRIBE.—The Tribe shall use the payments made under subparagraph (B) only for carrying out projects and programs under the plan prepared under subsection (f).

(e) LIMITATION ON TRANSFERS AND WITHDRAWALS.—Except as provided in subsections (c) and (d)(1), the Secretary of the Treasury shall not transfer or withdraw any amount deposited under subsection (b).

(f) DEVELOPMENT PLAN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the governing body of the Tribe shall prepare a plan for the use of the payments to the Tribe under subsection (d).

(2) CONTENTS.—The plan shall provide for the manner in which the Tribe shall expend payments to the Tribe under subsection (d) to promote—

(A) economic development;

(B) infrastructure development;

(C) the educational, health, recreational, and social welfare objectives of the Tribe and members of the Tribe; or

(D) any combination of the activities described in subparagraphs (A) through (C).

(3) PLAN REVIEW AND REVISION.—

(A) IN GENERAL.—The Tribal Council shall make available for review and comment by the members of the Tribe a copy of the plan before the plan becomes final, in accordance with procedures established by the Tribal Council.

(B) UPDATING OF PLAN.—

(i) IN GENERAL.—The Tribal Council may, on an annual basis, revise the plan to update the plan.

(ii) REVIEW AND COMMENT.—In revising the plan, the Tribal Council shall provide the members of the Tribe opportunity to review and comment on any proposed revision to the plan.

(C) CONSULTATION.—In preparing the plan and any revisions to update the plan, the Tribal Council shall consult with the Secretary and the Secretary of Health and Human Services.

(4) AUDIT.—

(A) IN GENERAL.—The activities of the Tribe in carrying out the plan shall be audited as part of the annual single-agency audit that the Tribe is required to prepare pursuant to the Office of Management and Budget circular numbered A–133.

(B) DETERMINATION BY AUDITORS.—The auditors that conduct the audit under subparagraph (A) shall—

(i) determine whether funds received by the Tribe under this section for the period covered by the audit were expended to carry out the plan in a manner consistent with this section; and

(ii) include in the written findings of the audit the determination made under clause (i).

(C) INCLUSION OF FINDINGS WITH PUBLICATION OF PROCEEDINGS OF TRIBAL COUNCIL.—A copy of the written findings of the audit described in subparagraph (A) shall be inserted in the published minutes of the Tribal Council proceedings for the session at which the audit is presented to the Tribal Council.

(g) PROHIBITION OF PER CAPITA PAYMENTS.—No portion of any payment made under this title may be distributed to any member of the Tribe on a per capita basis.

**SEC. 202. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.**

No payment made to the Tribe under this title shall result in the reduction or denial of any service or program with respect to which, under Federal law—

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

**SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to pay the administrative expenses of the Fund.

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By Mr. BYRD (for himself, Mr. BAYH, and Mr. ROCKEFELLER):

S. 1997. A bill to reinstate the safeguard measures imposed on imports of certain steel products, as in effect on December 4, 2003; to the Committee on Finance.

Mr. BYRD. Mr. President, last week, the Bush administration—in what has become its normal pattern—ignored the pleas of thousands of hardworking Americans. It lifted the steel tariffs it had promised the U.S. steel industry and imposed on foreign imports back in March of 2002.

Despite its earlier pledge to stand by America's steelworkers, the White House, in typical fashion, decided to turn its back on our highest valued workers and most vulnerable retirees. In a fit of pique and hard-hearted hubris, the White House decided to lift U.S. tariffs on foreign steel imports 15

months ahead of time, instead of letting the tariffs stay in place until March 2005, as is permitted by U.S. law.

Why? Why would the White House betray America's steel industry—the backbone of America's industrial base—particularly during this time of war? Of national emergency? No. Because the President feared retaliation from America's trading partners, he quivered at the threat that they would retaliate against U.S. exports if he did not lift the 201 tariffs. He cowered in the face of exactly those nations whose steel exports to the United States have driven 42 U.S. steel companies to their knees and into bankruptcy. His resolve collapsed in the face of retaliatory threats from America's most virulent competitors, whose illegal trade against the United States has already cost nearly 50,000 steelworkers their jobs.

America's foreign trade opponents gambled that this President lacked the resolve to stand up to them and to the WTO. Do you know? They were right. They were sadly correct.

But this President, George W. Bush, did not need to cave like a ''weak willy'' in the face of belligerent foreign bullies. Instead, he could have invoked Article XXI of the GATT, a viable trade tool that has been legitimately and successfully employed by the United States in the past to exempt itself from the GATT, now the WTO, in a time of war or national emergency. The President on July 31, 2003, formally proclaimed our Nation to be in a continued state of emergency. As a result of the President's own misguided and ill-advised actions, we remain engaged militarily in Iraq.

On July 31, 2003, President Bush formally declared that, in accordance with section 202(d) of the National Emergencies Act, he was ''continuing for one year the national emergency with respect to Iraq.'' We also continue to face an ongoing war against terrorism, both here at home and abroad.

So, President Bush had—and has—ample authority to invoke a provision of GATT 1994, negotiated by the United States and available to all WTO Members, that would permit him to exempt protections for the U.S. steel industry from retaliation by foreign countries.

But this President has so far lacked the foresight or the fortitude to take that step. Confronted with real threats of economic retaliation by determined competitors, the President folds like a house of cards astride the San Andreas fault.

That is why, today, I am introducing a bill that will do what the President refused to do. It will reinstate the 201 relief and reimpose the 201 tariffs against foreign steel imports. Under my bill, the 201 tariffs will be put back in place to stop foreign import surges, just as they did before the President so ill-advisedly lifted the tariffs last Thursday. And the tariffs will remain in place through March 5, 2005.

This administration should not have been bullied into abandoning the U.S. steel industry. Our steel industry is key to the national economic security of our Nation. Without steel, we cannot guarantee America's national security. Without steel, we could not have rebuilt after September 11. And I am not the only one who thinks that steel is integral to America's economic and national security. Just a few days before that fateful September day, on August 26, 2001, President Bush told America's steelworkers: ''If you're worried about the security of the country and you become over reliant upon foreign sources of steel, it can easily affect the capacity of our military to be well supplied. Steel is an important jobs issue; it is also an important national security issue.''

With an annual take deficit of almost $500 billion, Americans have a right to expect that international trade rules with work for them; not against them. They also have a right to know that the United States can respond as it must to the type of trade crises that have been suffered by America's steel industry for years.

There was absolutely no reason to lift the steel 201 tariffs. They are fully consistent with both U.S. law and our international agreements—regardless of the view of the WTO. The purpose of 201 relief is to give the domestic industry time to adjust to import competition. Our valiant steel industry is doing just that by pursuing unprecedented restructuring and new investment. Since the 201 tariffs were imposed, flat-rolled steel producers alone have invested more than $3 billion to enhance their productivity.

Critics of the 201 relief have been proved wrong on every significant fact concerning that relief. They said that once the tariffs were imposed, steel prices would go through the roof. Yet, prices have risen only modestly, and much less than abroad. The critics claimed that U.S. steel companies would do nothing to improve their competitiveness. But our Nation is witnessing the most dramatic restructuring in the industry's history. The critics also claimed that the tariffs would be bad for the U.S. economy, but the non-partisan U.S. International Trade Commission, ITC, recently found that the potential costs are minuscule—only about 2 percent of what Americans spend each month at McDonald's—and not even a drop in the bucket compared to the value we gain by restoring a critical U.S. industry to long-term competitiveness.

Other nations' actions in this Section 201 dispute have been truly disgraceful. The European Union originally threatened to retaliate against the United States immediately upon the President's application of the safeguard measures in March 2002. In the end, it hesitated. But its threat was sufficient to extort from the administration nearly unlimited exclusions from the tariffs to benefit foreign producers.

Acquiescing to this type of bullying jeopardizes the future of the U.S. steel industry, and it undermines the integrity of, and support for, the entire international trading system. Americans cannot be expected to support a system that works against them, rather than for them.

By lifting the tariffs, the administration is allowing Brazil, the European Union, Japan, and other nations, once again, to flood the U.S. market with imports. The Bush administration could have stood up for America's steelworkers like those at Weirton, WV, and Wheeling-Pittsburgh Steel in West Virginia, and demanded that other countries respect the legitimate rights of the United States in the world trading system. But this administration chose to back down, to lose face, to sit back and watch, once more, while thousands of additional U.S. steel jobs are destroyed by wave after wave of foreign imports.

The administration does not seem to care if the U.S. steel industry is destroyed at a time of war and in the midst of a national emergency. President Bush did not even care enough to personally inform the U.S. steel industry, its workers, and their families of his decision to lift the tariffs. No!! Instead, he sent a trade negotiator, Mr. Zoellick, to do his dirty work. Ambassador Zoellick had the audacity to tell us that the tariffs are ''no longer necessary.'' No longer necessary. And why did he say that they are no longer necessary? They are no longer necessary because, he said, ''these safeguard measures have achieved their purpose.''

The only purpose that I can see in this decision to shut the tariff program down is to succumb to threats and demands from abroad. The only effect will be the loss of more steel manufacturing jobs here at home.

On October 27, 2000, Mr. DICK CHENEY—do you know him? He is now Vice President of the United States—just a few days before the elections he came to Weirton, WV, to campaign for the Bush-Cheney ticket. During that visit, Mr. CHENEY forcefully pledged to help America's steelworkers. He said, ''We will never lie to you. If our trading partners violate our trading laws, we will respond swiftly and firmly.''

Promise made, promise broken. Unfortunately, like so many commitments this administration has made, its pledge to help America's steel industry got off to a headline-grabbing start, but has now been discarded, out of the glare of the campaign spotlight.

So now, only 3 years after Mr. CHENEY's campaign-season vow of honesty to America's steelworkers, this White House has taken an axe to the 201 tariffs and betrayed the trust of thousands of American families whose paychecks depend on the U.S. steel industry.

Mr. President, the Bush White House has absolutely failed the working families across this country. This White House has traded the best interests of the American people for the big special interests of corporate campaign contributors. It is no surprise that the Bush Administration would turn its back on steelworkers.

When the Bush-Cheney ticket needed West Virginia's votes in 2000, it pledged to help our steel industry. At first, it appeared as though the administration would follow through on that promise. The White House applied the steel tariffs, for which West Virginia was thankful and for which I and other Senators congratulated, commended and thanked the administration. But then the President exempted import after import from those tariffs. Now the President has eliminated the tariffs completely.

The Bush White House may have forgotten the promise made to the steel industry in West Virginia, but thousands of West Virginians and other steelworkers across the Nation will not forget. The recognize a fair-weather friend when they seen one.

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By Mr. BINGAMAN (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, Mrs. CLINTON, Mr. NELSON of Nebraska, Mrs. LINCOLN, Mr. HAGEL, Mr. JEFFORDS, Mr. DOMENICI, Mr. HARKIN, and Mr. PRYOR):

S. 1998. A bill to amend title 49, United States Code, to preserve the essential air service program; to the Committee on Commerce, Science, and Transportation.

Mr. BINGAMAN. Mr. President, I rise today to introduce the bipartisan Essential Air Service Preservation Act of 2003. I am pleased to have my colleague Senator SNOWE as the principal cosponsor of the bill. Senator SNOWE has been a long-time champion of commercial air service in rural areas, and I appreciate her continued leadership on this important legislation. Senators SHUMER, LEAHY, CLINTON, BEN NELSON, LINCOLN, HAGEL, JEFFORDS, DOMENICI, and HARKIN, are also cosponsors of the bill.

Congress established the Essential Air Service Program in 1978 to ensure that communities that had commercial air service before airline deregulation could continue to receive scheduled service. Without EAS, many rural communities would have no commercial air service at all.

Our bill is very simple. It preserves Congress's intent in the Essential Air Service program by repealing a provision in the FAA reauthorization bill that would for the first time require communities to pay for their commercial air service.

Congress has already barred the Department of Transportation from implementing any cost sharing requirements on Essential Air Service communities for one year. This bill would now make the ban permanent. I believe that implementing any mandatory cost sharing is the first step in the total elimination of scheduled air service for many rural communities.

It is indeed a sad commentary on this Congress that my colleagues and I have to introduce this bill at all. Time and again Congress has gone on record opposing mandatory cost sharing for EAS communities, yet it keeps coming back.

In June, during consideration of the FAA reauthorization bill, Senator INHOFE and I, with 13 bipartisan cosponsors, offered an amendment that struck out a provision in that bill imposing mandatory cost sharing on some EAS communities.

I was pleased the full Senate agreed and voted to eliminate mandatory cost sharing from the FAA reauthorization bill. In parallel, the full House of Representatives adopted a similar amendment to the FAA bill. Thus, the bills that were sent to conference required no cost sharing for EAS communities.

Most students of government would tell you that when a majority of both houses of Congress have voted against a particular measure, the conferees couldn't arbitrarily put it back in. Well, they did. In another example of this Congress's secret back room dealing, the conferees excluded the minority members, flagrantly ignored the will of the majority in the House and the Senate, and restored the very cost-sharing language both houses one month before had voted to reject. I believe adding this extraneous and objectionable provision was an egregious violation of the conference process.

When cost sharing showed up in the FAA conference report, Congress, with bipartisan support, stopped the Department of Transportation from implementing the measure for one year by barring the use of 2004 appropriations for that purpose. The bill we are introducing today permanently repeals the mandatory cost-sharing requirements that the conferees reinserted into the FAA reauthorization bill after both the House and Senate had voted not to include them. I hope both houses of Congress will again do the right thing by passing our bill.

All across America, small communities face ever-increasing hurdles to promoting their economic growth and development. Today, many rural areas lack access to interstate or even four-lane highways, railroads or broadband telecommunications. Business development in rural areas frequently hinges on the availability of scheduled air service. For small communities, commercial air service provides a critical link to the national and international transportation system.

The Essential Air Service Program currently ensures commercial air service to over 100 communities in 34 states. EAS supports an additional 33 communities in Alaska. Because of increasing costs and the current financial turndown in the aviation industry, particularly among commuter airlines, about 28 additional communities have been forced into the EAS program since the terrorist attacks in 2001.

In my State of New Mexico, five cities currently rely on EAS for their commercial air service. The communities are Clovis, Hobbs, Carlsbad, Alamogordo and my hometown of Silver City. In each case commercial service is provided to Albuquerque, the State's business center and largest city.

I believe this ill-conceived proposal requiring cities to pay to continue to have commercial air service could not come at a worse time for small communities already facing depressed economies and declining tax revenues.

As I understand it, the mandatory cost-sharing requirements in the FAA reauthorization bill could affect communities in as many as 22 states. Based an analyses by my staff, the individual cities that may be affected are as follows:

Alabama—Muscle Shoals; Arizona—Prescott, Kingman; Arkansas—Hot Springs, Harrison, Jonesboro; Colorado—Pueblo; Georgia—Athens; Iowa—Fort Dodge, Burlington; Kansas—Salina; Kentucky—Owensboro; Maine—Augusta, Rockland; Michigan—Iron Mt.; Mississippi—Laurel; Nebraska—Norfolk; New Hampshire—Lebanon; New Mexico—Hobbs, Alamogordo, Clovis; New York—Saranac Lake, Watertown, Jamestown, Plattsburgh; Oklahoma—Ponca City, Enid; Pennsylvania—Johnstown, Oil City, Bradford, Altoona; South Dakota—Brookings, Watertown; Tennessee—Jackson; Texas—Victoria; Vermont—Rutland; Washington—Moses Lake.

As I see it, the choice here is clear: If we do not preserve the Essential Air Service Program today, we could soon see the end of all commercial air service in rural areas. The EAS program provides vital resources that help link rural communities to the national and global aviation system. Our bill will preserve the essential air service program and help ensure affordable, reliable, and safe air service remains available in rural America. Congress is already on record opposing mandatory cost sharing. I hope all Senators will once again join us in opposing this attack on rural America.

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. 1998

*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 ''Essential Air Service Preservation Act of 2003''.

**SEC. 2. REPEAL OF EAS LOCAL PARTICIPATION PROGRAM.**

(a) IN GENERAL.—Subchapter II of chapter 417 of title 49, United States Code, is amended by striking section 41747, and such title shall be applied as if such section 41747 had not been enacted.

(b) CONFORMING AMENDMENT.—The analysis for subchapter II of chapter 417 of title 49, United States Code, is amended by striking the item relating to section 41747.

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By Mr. DASCHLE (for himself, Ms. STABENOW, Mr. GRAHAM of Florida, Mr. KENNEDY, Mr. PRYOR, Mr. DORGAN, Mrs. BOXER, Mr. LAUTENBERG, Mr. BINGAMAN, Ms. MIKULSKI, Mr. JOHNSON, Mr. SCHUMER, Mr. KOHL, Ms. CANTWELL, and Mr. ROCKEFELLER):

S. 1999. A bill to amend part D of title XVIII of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to provide for negotiation of fair prices for medicare prescription drugs; to the Committee on Finance.

Mr. DASCHLE. Mr. President, yesterday, the President signed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. But the name of that Act is completely misleading. In fact, the Act fundamentally damages the successful and popular Medicare program—a long-term Republican goal. And this Act does more to ensure that drug prices remain high than it does to assist beneficiaries in paying for their drugs.

Why? Because drug companies want it that way. Republicans with financial ties to the industry are protecting drug company interests over the interests of seniors and people with disabilities.

America's seniors pay the highest drug prices in the world, even though American taxpayers subsidize the research that produces many of those drugs. The Medicare bill signed by the President squanders our chances of remedying that inequity. Not only does the bill effectively prohibit the reimportation of more affordable drugs from other countries, it actually prohibits Medicare from using its tremendous bargaining power to ensure that beneficiaries pay lower prices and that our scant resources are most effectively used.

Today, Senate Democrats are siding with the seniors. We are introducing legislation that would repeal the provision barring Medicare from negotiating for lower prices. The Medicare Prescription Drug Price Reduction Act would give Medicare the authority to negotiate with drug companies to obtain the lowest possible prices for seniors and people with disabilities. House Democrats introduced a companion bill yesterday. Together, we will fight for the goal of giving Medicare beneficiaries the drug benefit and lower prices they deserve.

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By Mrs. CLINTON:

S. 2003. A bill to amend the Public Health Service Act to promote higher quality health care and better health by strengthening health information, information infrastructure, and the use of health information by providers and patients; to the Committee on Finance.

Mrs. CLINTON. Mr. President, today, I am introducing a bill that seeks to begin a dialogue on one of the most important yet neglected aspects of our health care system—health care quality. this is an enormous issue that affects every single one of us who has ever needed medical care, and it affects all taxpayers because quality care has such potential to avoid waste and save millions of dollars in health care costs. I have raised many of these ideas as amendments in other contexts, such as the Medicare debate on S. 1, and the debate over S. 720, the Patient Safety and Quality Improvement Act of 2003. I intend to continue working with my colleagues on improving these ideas and proposing additional concepts. But with this bill today, I seek to put forward a package of ideas, provoke conversation, and present this as a first step in making quality a focus of my health care efforts next year. My goal with these efforts is to both improve quality and outcomes, and reduce costs by encouraging care that is more effective.

There is no reason why we cannot achieve this. We have the most advanced medical system in human history—the finest medical institutions, the newest treatments, the best trained health care professionals. But in spite of the best intentions of clinicians and patients, our health care system is plagued with underuse, overuse, and misuse. currently, only about 50 percent of care that is known to be effective is provided, and the care given is supported by solid scientific evidence, and the pace of dissemination of new evidence is painfully slow. It may take up to 17 years for treatments found to be effective to become common practice.

Much of the overuse or misuse of health services stems from the fragmentation of our system. In a recent study in Santa Barbara, CA, 20 percent of lab tests and x-rays were conducted solely because previous results were unavailable. One in seven hospitalizations occurs because information is unavailable, and a shocking percentage of the time, physicians do not find patient information that had previously been recorded in a paper-based medical record.

Despite all of our Nation's medical advances, health quality is becoming even more endangered in some respects. Nursing care which is often shown to be a decisive factor for hospital patient outcomes, its in grave shortage, and a majority of U.S. physicians surveyed by the Commonwealth Fund perceive their ability to provide quality care as having worsened over the last 5 years.

Additionally, even as the quality of health care we purchase lags, our spending on inadequate and wasteful care is spiraling out of control. Premiums increased 13 percent last year, and health care costs are increasing at nearly 10 times the rate of inflation. To make matters worse, the public health system is straining to meet the challenges of bioterrorism or emerging infections, the number of uninsured Americans is rising, clinicians are leaving practice, and the older adult population is set to double by 2040.

The reason is not because doctors aren't trying hard enough, or hospitals are at fault. That we're able to get good health care at all is testament to the genius and heroism of doctors and nurses who deliver care, despite all the obstacles, despite every effort of the system to hinder them.

But what our medical system requires of providers is a little like asking pilots to routinely land planes without any information from the control tower. The best of them can do it—they could land a plane with one arm around their backs missing key information and confirmations, but why force them to do it? Why deny them critical information when it could be easily available? There is no plausible reason for denying needed information, especially when life and death are at stake.

That's unfortunately exactly what our health care system says to doctors, nurses, and hospitals. Physicians for example spend four years in medical school, and then several years more in their residency training, cramming medical information into their heads. Then we expect them to look at a patient taking four different drugs, with a heart condition, and immediately remember any drug-drug interactions that could occur. We ask them to do it without looking up any reference materials. We ask them to do it in the few minutes that they have with each patient given the ever-shorter visits, and ever-increasing patient and paperwork load. Moreover, in their free time, they are expected to keep up with all the new journal articles and learn about every new drug.

Yet hand-held computers can now allow the doctor to pull up up-to-date information immediately, right at the bedside, if he or she has any question. And NIH spends billions of dollars in research to generate that information. Shouldn't that investment reap results for the patient as quickly as possible? This bill seeks to provide the direction that would support such technology and make it widely available to physicians.

Right now, doctors, nurses, and hospitals are holding the health care system up, preventing utter collapse by sheer, heroic, force of will. Instead of the clinicians supporting the system, we should build a system that supports clinicians instead.

The premise of this legislation is that information, in the hands of the right people at the right time, drives quality and value. We need to empower patients and health care providers to make the right choices. And to do that, health care decisionsmakers—providers, payers, and patients—need to have access to the right information, where and when it is needed, securely and privately.

This legislation seeks to: 1. Generate information about health quality through increased research, increased public reporting along key quality measures, and standardization of those measures to assure comparability and usability of reported information; 2. Ensure that payers, providers and patients get information in a usable form so they can make effective decisions; and 3. Reduce barriers to the development of an IT infrastructure that is so critical to achieving those first 2 goals.

Eighty percent of the care delivered today is not backed by sound clinical

research. That is why we need to do more research, and see if the care we provide today has sound justification in science. But even where we know what to do, we don't always do it because the information is insufficiently disseminated and utilized. Studies have shown some procedures being performed even when they have not met accepted criteria for appropriateness: In one study, of all the non-emergent, noncancerous hysterectomies performed, only 30 percent had been properly worked up and met the full medical criteria for necessity. In another study, about one-fourth of coronary angiographies and upper gastrointestinal endoscopies did not meet standards of medical appropriateness.

On the flip side, in situations where the benefits of an intervention are clear, many patients do not receive the indicated care: Very few hospitalized patients at-risk for pneumococcal pneumonia who had not been previously vaccinated end up being vaccinated during their hospital stay. Routine peak flow measurements are conducted in only 28 percent of pediatric patients with asthma. And only one-half of diabetics receive an annual eye exam.

We know what good health care means in these areas, but we don't practice it, in part because that information may not be readily available, and regardless, there is no incentive for quality. We are suggesting—track the outcomes, share that information with patients, providers, and insurers, and ultimately, pay for performance.

This bill will help us become better purchasers of care, and help us take the first steps toward aligning the incentives so that higher quality is rewarded. I ask unanimous consent that the attached article from last week's New York Times be printed in the RECORD showing how our current reimbursement system is gravely misaligned. Under the current system, higher quality can be penalized, while worse care can ironically be more profitable.

Today, by introducing these ideas for the purpose of seeking feedback from my colleagues and experts in the field, I am taking the first step toward improving our health care system for everyone and saving money. I invite interested colleagues to join me in partnership on this important venture and look forward to taking strong, positive action next year to improve health quality for all Americans.

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

[From the New York Times, Dec. 5, 2003]

HOSPITALS SAY THEY'RE PENALIZED BY MEDICARE FOR IMPROVING CARE

(By Reed Abelson)

SALT LAKE CITY.—By better educating doctors about the most effective pneumonia treatments, Intermountain Health Care, a network of 21 hospitals in Utah and Idaho, say it saves at least 70 lives a year. By giving the right drugs at discharge time to more people with congestive heart failure, Intermountain saves another 300 lives annually and prevents almost 600 additional hospital stays.

But under Medicare, none of these good deeds go unpunished.

Intermountain says its initiatives have cost it millions of dollars in lost hospital admissions and lower Medicare reimbursements. In the mid-90's, for example, it made an average profit of 9 percent treating pneumonia patients; now, delivering better care, it loses an average of several hundred dollars on each case.

''The health care system is perverse,'' said a frustrated Dr. Brent C. James, who leads Intermountain's efforts to improve quality. ''The payments are perverse. It pays us to harm patients, and it punishes us when we don't.''

Intermountain's doctors and executives are in a swelling vanguard of critics who say that Medicare's payment system is fundamentally flawed.

Medicare, the nation's largest purchaser of health care, pays hospitals and doctors a fixed sum to treat a specific diagnosis or perform a given procedure, regardless of the quality of care they provide. Those who work to improve care are not paid extra, and poor care is frequently rewarded, because it creates the need for more procedures and services.

The Medicare legislation that President Bush is expected to sign on Monday calls for studies and a few pilot programs on quality improvement, but experts say that it does little to reverse financial disincentives to improving care.

''Right now, Medicare's payment system is at best neutral and, in some cases, negative, in terms of quality—we think that is an untenable situation,'' said Glenn M. Hackbarth, the chairman of the Medicare Payment Advisory Commission, an independent panel of economists, health care executives and doctors that advises Congress on such issues as access to care, quality and what to pay health care providers.

In a letter published in the current edition of Health Affairs, a scholarly journal, more than a dozen health care experts, including several former top Medicare officials, urged the program to take the lead in overhauling payment systems so that they reward good care.

''Despite a few initial successes, the inertia of the health system could easily overwhelm nascent efforts to raise average performance levels out of mediocrity,'' they wrote. ''Decisive change will occur only when Medicare, with the full support of the administration and Congress, creates financial incentives that promote pursuit of improved quality.''

Medicare's top official is quick to agree that the payment system needs to be fixed. ''It's one of the fundamental problems Medicare faces,'' said Thomas A. Scully, who as the administrator of the Centers for Medicare and Medicaid Services has encouraged better care by such steps as publicizing data about the quality of nursing home and home-health care and by experimenting with programs to reward hospitals for their efforts.

But the steps taken so far have been small, and many experts say that rather than paying for more studies, Congress should start making significant changes to the way doctors and hospitals are paid.

''They're splashing at the shallow end of the pool,'' said Dr. Arnold Milstein, a consultant for Mercer Human Resource Consulting and the medical director for the Pacific Business Group on Health, an association of large California employers. He would like to see as much as 20 percent of what Medicare pays doctors and hospitals linked to the quality of the care they provide and their efficiency in delivering treatment.

Two decades ago, Medicare led a revolution in health care. By setting fixed payments for various kinds of treatment—a coronary bypass surgery or curing a pneumonia or replacing a hip—rather than simply reimbursing doctors and hospitals for whatever it cost to deliver the care, it encouraged shorter hospital stays and less-expensive treatments.

But today, many health care executives say, Medicare's payment system hinders attempts to improve care. Dr. James, the Intermountain executive, said that he wrestled with the situation every day.

By making sure its doctors prescribe the most effective antibiotic for pneumonia patients, for example, and thereby avoiding complications, Intermountain forgoes roughly $1 million a year in Medicare payments, he estimated. When a pneumonia patient deteriorates so badly that the patient needs a ventilator, Intermountain collects about $19,000, compared with $5,000 for a typical pneumonia case. And while it makes money treating the sicker patient, Dr. James said, it loses money caring for the healthier one.

Nor is Intermountain rewarded for sparing someone a stay in the hospital—and for sparing Medicare the bill. Shirley Monson, 74, of Ephraim, Utah, said that she expected to be hospitalized when she developed pneumonia last year. Instead, Sanpete Valley Hospital, part of Intermountain, sent Mrs. Monson home with antibiotics, and she recovered over the next two weeks. Such visits produce just token payments for hospitals.

In addition to losing revenue each time it avoids an unnecessary hospital stay, Intermountain is penalized for treating only the sickest patients, Dr. James said. Medicare's payments for pneumonia are based on a rough estimate of the cost of an average case and assume a hospital will see a range of patients, some less sick—and therefore less expensive to treat—than others. But because Intermountain now admits only the sickest patients, its reimbursements fall short of its costs, Dr. James said, resulting in an average loss this year of a few hundred dollars a case.

Similarly, averting hospital stays for congestive heart patients by prescribing the right medicines costs Intermountain nearly $4 million a year in potential revenues, according to Dr. James. And every adverse drug reaction Intermountain avoids deprives it of the revenue from treating the case.

''We are really rewarded for episodic care and maximizing the care delivered in each episode,'' said Dr. Charles W. Sorenson Jr., Intermountain's chief operating officer.

Like the visit majority of the nation's hospitals, Intermountain is a nonprofit organization, and executives here say financial penalties do not damp their desire to provide the highest quality care, which they see as their central mission. But Intermountain, which operates health plans and outpatient clinics in addition to its hospitals, says it beds to keep hospital beds filled and make money where it can to subsidize unprofitable services and pay for charity care.

Outside of Medicare, Intermountain often benefits from its quality initiatives, executives said, because it gets to pocket much of the savings they produce. For example, Intermountain has generated about $2 million annually in savings by reducing the number of deliveries that women choose to induce before 39 weeks of pregnancy—and thereby reducing the risk of complications to the mother or baby. According to Dr. James, almost all that money has been spent on other kinds of care.

Hospital executives elsewhere say that they, too, have come up against the cold reality of the Medicare payment system. Partners HealthCare, the Boston system that includes Massachusetts General and Brigham

and Women's Hospitals, has taken steps to reduce the number of unnecessary diagnostic tests it conducts at outpatient radiology centers, though executives know that smarter care will cut into their revenues.

''That's where you're smack up against the perverseness of the system,'' said Dr. James J. Mongan, chief executive of Partners.

Medicare's payment policies have stymied efforts in the private sector to improve care, as well.

For example, the Leapfrog Group, a national organization of large employers concerned about health issues, has tried to encourage more hospitals to employ intensivists—specialists who oversee the care provided in intensive-care units. Though studies show that such doctors significantly improve care, Medicare does not pay for them, and employers and insurers are having difficulty persuading some hospitals to take on the added expense.

''It's going to be very hard to compete with the incentives and disincentives in Medicare,'' said Suzanne Delbanco, the group's executive director.

Others argue that hospitals and doctors should not be paid extra for doing what they should be doing in the first place.

Helen Darling, the executive director of the National Business Group on Health, a national employer group, said Medicare instead should take a firmer stance in demanding quality. The program had a significant effect, she noted, when it said that only hospitals meeting a minimum set of standards could be reimbursed by Medicare for heart transplants.

''The payment system drove quality,'' Ms. Darling said.

Medicare itself is taking some other tentative steps, including an experiment that pays certain hospitals an extra 2 percent for delivering the highest-quality care, as measured, for example, by administering antibiotics to pneumonia patients quickly and giving heart attack patients aspirin. But some hospital industry executives question whether that is enough money to offset the costs of improving care.

''It can only be a motivator if you really have an incentive,'' said Carmela Coyle, an executive with the American Hospital Association, who noted that hospitals on average are paid only 98 cents for each dollar of Medicare services they provide.

Mr. Scully, the Medicare administrator, defends the experiment, saying that the agency's goal is to determine if it is using the right measures to reward quality. ''If this works, we'll do a bigger demonstration,'' he said.

But many policy analysts and employer groups want Medicare to do more. ''Today, Medicare needs to step out front,'' said Peter V. Lee, chief executive of the Pacific Business Group on Health, who argues that how hospitals and doctors are paid is a critical component of motivating them to improve care. ''There needs to be money at play.''

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 279—RECOGNIZING THE IMPORTANCE AND CONTRIBUTIONS OF SPORTSMEN TO AMERICAN SOCIETY, SUPPORTING THE TRADITIONS AND VALUES OF SPORTSMEN, AND RECOGNIZING THE MANY ECONOMIC BENEFITS ASSOCIATED WITH OUTDOOR SPORTING ACTIVITIES

Mr. COLEMAN submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. RES. 279

Whereas there are more than 38,000,000 sportsmen in the United States;

Whereas these sportsmen, who come from all walks of life, engage in a sport they love, while helping to stimulate the economy, especially in small, rural communities, and contributing to conservation efforts;

Whereas sportsmen demonstrate values of conservation, appreciation of the outdoors, and love of the natural beauty of the United States;

Whereas sporting activities have both physical and mental health benefits that allow Americans to escape from the fast pace of their lives and to spend time with their families and friends;

Whereas sportsmen pass down their love of the outdoors from generation to generation;

Whereas many sportsmen consider hunting, trapping, and fishing of tremendous importance to the American way of life;

Whereas sportsmen have a passion for learning about nature and have tremendous respect for the game pursued, other sportsmen, the non-hunting populace, and the natural resources upon which they depend;

Whereas the total economic contribution of sportsmen amounts to $70,000,000,000 annually, with a ripple effect amounting to $179,000,000,000;

Whereas sportsmen contribute $1,700,000,000 every year for conservation programs, and these funds constitute a significant portion of on-the-ground wildlife conservation funding;

Whereas anglers support 1,000,000 jobs and small businesses in communities in every part of the United States, and they purchase $3,200,000,000 in basic fishing equipment every year;

Whereas tens of millions of Americans hunt and are a substantial economic force, spending $21,000,000,000 every year;

Whereas a sportsman President, Theodore Roosevelt, established America's first National Wildlife Refuge 100 years ago, and with the committed support of sportsmen over the last century, the National Wildlife Refuge System includes more than 540 refuges spanning 95,000,000 acres throughout all 50 States;

Whereas the funds raised from sportsmen through purchases of Federal migratory bird hunting and conservation stamps under the Act of March 16, 1934 (commonly known as the Duck Stamp Act) (16 U.S.C. 718a et seq.), are used to purchase and restore vital wetlands in the refuge system;

Whereas the sale of those stamps has raised more than $500,000,000 which has been used to acquire approximately 5,000,000 acres of refuge lands;

Whereas in 1937, Congress passed the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.), under which sportsmen and the firearms and ammunition industries agreed to a self-imposed 10 percent excise tax on ammunition and firearms, the proceeds of which are distributed to the States for wildlife restoration;

Whereas the Pittman-Robertson Wildlife Restoration Act has created a source of permanent funding for State wildlife agencies that has been used to rebuild and expand the ranges of numerous species, including wild turkey, white-tailed deer, pronghorn antelope, wood duck, beaver, black bear, American elk, bison, desert bighorn sheep, bobcat, and mountain lion, and several non-game species, including bald eagles, sea otters, and numerous song birds;

Whereas in 1950, Congress passed the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.), under which recreational anglers and the fishing and tackle manufacturing industries agreed to a self-imposed 10 percent excise tax on sport fishing equipment (including fishing rods, reels, lines, and hooks, artificial lures, baits and flies, and other fishing supplies and accessories), the proceeds of which are used for the purposes of constructing fish hatcheries, building boat access facilities, promoting fishing, and educating children about aquatic resources and fishing; and

Whereas the Dingell-Johnson Sport Fish Restoration Act was amended in 1984 to extend the excise tax to previously untaxed items of sport fishing equipment and to dedicate a portion of the existing Federal tax on motorboat fuels to those purposes, so that now approximately ⅓ of the funds expended by State fish and wildlife agencies for maintenance and development of sports fisheries are collected through the use of the excise tax: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the importance and contributions of sportsmen to American society;

(2) supports the traditions and values of sportsmen;

(3) supports the many conservation programs implemented by sportsmen;

(4) recognizes the many economic benefits associated with outdoor sporting activities; and

(5) recognizes the importance of encouraging the recruitment of, and teaching the traditions of hunting, trapping, and fishing to, future sportsmen.

### SENATE RESOLUTION 280—CONGRATULATING THE SAN JOSE EARTHQUAKES FOR WINNING THE 2003 MAJOR LEAGUE SOCCER CUP

Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 280

Whereas on November 23, 2003, the San Jose Earthquakes defeated the Chicago Fire to win the 2003 Major League Soccer Cup;

Whereas the San Jose Earthquakes achieved a 14–7–9 regular season record to finish first in the Major League Soccer Western Conference;

Whereas the San Jose Earthquakes finished an extraordinary season by overcoming injuries, adversity, and multiple-goal deficits to reach the Major League Soccer Cup championship match;

Whereas in the championship match, the San Jose Earthquakes and the Chicago Fire scored 6 goals combined, breaking the Major League Soccer Cup championship match scoring record;

Whereas head coach Frank Yallop led the San Jose Earthquakes to victory;

Whereas the San Jose Earthquakes is a team of world-class players, including Jeff Agoos, Arturo Alvarez, Brian Ching, Jon Conway, Ramiro Corrales, Troy Dayak, Dwayne De Rosario, Landon Donovan, Todd Dunivant, Ronnie Ekelund, Rodrigo Faria, Manny Lagos, Roger Levesque, Brain Mullan, Richard Mulrooney, Pat Onstad, Eddie Robinson, Chris Roner, Ian Russell, Josh Saunders, Craig Waibel, and Jamil Walker, all of whom contributed extraordinary performances throughout the regular season, playoffs and Major League Soccer Cup;

Whereas San Jose Earthquakes midfielder Ronnie Ekelund scored in the fifth minute of play, tying Eduardo Hurtado for the fastest goal scored in a Major League Soccer Cup championship match;