

record that is unrivalled. In addition, nuclear plants produce electricity without producing harmful emissions or greenhouse gases. Nuclear energy is the only major energy source that is both emission-free and expandable.

The use of nuclear energy also reduces our dependence on foreign sources of energy. Protecting our Nation's energy independence must remain at the forefront of our energy policy decisions.

Since scientists first harnessed the power of the atom for the benefit of mankind, the United States has led the world in the development of nuclear science and technology. With some 29 nuclear reactors under construction in other countries, the United States' leadership role in commercial nuclear power could be diminished. Our scientists, engineers and technicians must research, develop and build new nuclear facilities to keep their skills sharp and further their knowledge. In addition, new plant project also will mean more jobs for those scientists, engineers and technicians, as well as many other trades.

America's nuclear power plants contribute to nonproliferation efforts. Through the public-private "Megatons to Megawatts" program, which this body has strongly supported, 50 percent of the fuel used in our commercial reactors comes from converted Russian warheads.

Nuclear energy also is one of the most efficient means of producing hydrogen, another key to our energy future. Hydrogen will help reduce our dependence on imported petroleum in the transportation sector, and, like nuclear energy, is a clean air energy.

Therefore, I call upon my colleagues to join me in support of this resolution recognizing nuclear energy's important contributions to our Nation, such as maintaining our energy independence and protecting our environment. And I urge all of you to join me in supporting research, development and construction of new nuclear power plants today, so that nuclear energy can continue providing these benefits in the future.

AMENDMENTS SUBMITTED & PROPOSED

SA 3975. Ms. COLLINS (for Mr. HATCH (for himself and Mr. LEAHY)) proposed an amendment to the bill H.R. 1417, To amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges.

SA 3976. Ms. COLLINS (for Mr. INHOFE (for himself, Mr. JEFFORDS, Mr. BOND, and Mr. REID)) proposed an amendment to the bill S. 1134, to reauthorize and improve the programs authorized by the Public Works and Economic Development Act of 1965.

SA 3977. Ms. COLLINS (for herself and Mr. LIEBERMAN) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

SA 3978. Ms. COLLINS (for Mr. ENSIGN) proposed an amendment to the bill S. 2845, supra.

SA 3979. Ms. COLLINS (for Mr. KYL) proposed an amendment to the bill S. 2845, supra.

SA 3980. Mr. LIEBERMAN (for Mr. SCHUMER) proposed an amendment to the bill S. 2845, supra.

SA 3981. Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) proposed an amendment to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

SA 3982. Mr. FRIST (for Mr. HATCH (for himself and Mr. BIDEN)) proposed an amendment to the bill S. 2195, to amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relating to steroids and steroid precursors.

SA 3983. Mr. MCCONNELL (for Mr. MCCAIN (for himself and Mr. NELSON, of Florida)) proposed an amendment to the bill H.R. 2608, to reauthorize the National Earthquake Hazards Reduction Program, and for other purposes.

SA 3984. Mr. BAYH (for himself, Mr. ROBERTS, Mr. WYDEN, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table.

SA 3985. Mr. CHAMBLISS (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3975. Ms. COLLINS (for Mr. HATCH (for himself and Mr. LEAHY)) proposed an amendment to the bill H.R. 1417, to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Royalty and Distribution Reform Act of 2004".

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

(a) IN GENERAL.—Chapter 8 is amended to read as follows:

"CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

"Sec.

"801. Copyright Royalty Judges; appointment and functions.

"802. Copyright Royalty Judgeships; staff.

"803. Proceedings of Copyright Royalty Judges.

"804. Institution of proceedings.

"805. General rule for voluntarily negotiated agreements.

"§ 801. Copyright Royalty Judges; appointment and functions

"(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright

Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights.

"(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

"(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

"(A) To maximize the availability of creative works to the public.

"(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

"(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

"(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

"(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

"(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

"(i) national monetary inflation or deflation; or

"(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

"(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

"(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

"(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with

respect to any distant signal equivalent or fraction thereof represented by—

“(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

“(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

“(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

“(D) The gross receipts limitations established by section 111(d)(1) (C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

“(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

“(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

“(C) The Copyright Royalty Judges may make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

“(i) agree to such partial distribution;

“(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);

“(iii) file the agreement with the Copyright Royalty Judges; and

“(iv) agree that such funds are available for distribution.

“(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

“(4) To accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

“(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b) (1) and (2).

“(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

“(7)(A) To adopt as a basis for statutory terms and rates or as a basis for the distribu-

tion of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

“(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

“(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

“(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b) (2) or (3) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

“(C) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

“(8) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g) at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

“(c) RULINGS.—As provided in section 802(f)(1), the Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges.

“(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright Royalty Judges with the necessary administrative services related to proceedings under this chapter.

“(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

“§ 802. Copyright Royalty Judgeships; staff

“(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

“(1) IN GENERAL.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h).

“(2) DEFINITION.—In this subsection, the term ‘adjudication’ has the meaning given that term in section 551 of title 5, but does not include mediation.

“(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

“(c) TERMS.—The individual first appointed the Chief Copyright Royalty Judge

shall be appointed to a term of 6 years, and of the remaining individuals first appointed Copyright Royalty Judges, 1 shall be appointed to a term of 4 years, and the other shall be appointed to a term of 2 years. Thereafter, the terms of succeeding Copyright Royalty Judges shall each be 6 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

“(d) VACANCIES OR INCAPACITY.—

“(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

“(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

“(e) COMPENSATION.—

“(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL-1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL-2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

“(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

“(A) the rate of pay of 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS-15 of the General Schedule;

“(B) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS-13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-14 of such Schedule; and

“(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS-8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-11 of such Schedule.

“(3) LOCALITY PAY.—All rates of pay referred to under this subsection shall include locality pay.

“(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

“(1) IN MAKING DETERMINATIONS.—

“(A) IN GENERAL.—(i) Subject to clause (ii) of this subparagraph and subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact.

“(i) A Copyright Royalty Judge or Judges, or, by motion to the Copyright Royalty Judge or Judges, any participant in a proceeding may request an interpretation by the Register of Copyrights concerning any material question of substantive law (not including questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate) concerning an interpretation or construction of those provisions of this title that are the subject of the proceeding. Any such request for a written interpretation by the Register of Copyrights shall be on the record. Reasonable provision shall be made for comment by the participants in the proceeding on the material question of substantive law in such a way as to minimize duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges a response within 14 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and shall be included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal interpretation embodied in the response of the Register of Copyrights in resolving material questions of substantive law.

“(B) NOVEL QUESTIONS.—(i) In any case in which a novel material question of substantive law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. Reasonable provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register shall transmit his or her decision to the Copyright Royalty Judges within 30 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

“(ii) In clause (i), a ‘novel question of law’ is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

“(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

“(D) REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall

issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to section 802(f)(1)(D), the Register of Copyrights may, on the basis of and in accordance with such decision, intervene as of right in any appeal of a final determination of the Copyright Royalty Judges pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification and undertakes to consult with the Attorney General with respect to such intervention, and the Attorney General fails within reasonable period after receipt of such notification to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

“(E) EFFECT ON JUDICIAL REVIEW.—Nothing in this section shall be interpreted to alter the standard applied by a court in reviewing legal determinations involving an interpretation or construction of the provisions of this title or to affect the extent to which any construction or interpretation of the provisions of this title shall be accorded deference by a reviewing court.

“(2) PERFORMANCE APPRAISALS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

“(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

“(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties that conflict with his or her duties and responsibilities as a Copyright Royalty Judge.

“(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

“(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright

Royalty Judge during the period of any such suspension.

“§ 803. Proceedings of Copyright Royalty Judges

“(a) PROCEEDINGS.—

“(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, copyright arbitration royalty panels, the Register of Copyrights, and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1) (A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

“(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

“(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

“(b) PROCEDURES.—

“(1) INITIATION.—

“(A) CALL FOR PETITIONS TO PARTICIPATE.—

(i) Promptly upon a determination made under section 804(a), or no later than January 5 of a year specified in section 804(b) (2) or (3), or as provided under section 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be.

“(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under section 803(b)(3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

“(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject

matter of the proceeding. Parties with similar interests may file a single petition to participate.

“(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

“(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of \$150;

“(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

“(C) the Copyright Royalty Judges have not determined, *sua sponte* or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

“(3) VOLUNTARY NEGOTIATION PERIOD.—

“(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

“(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

“(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

“(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

“(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts a claim in the amount of \$10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and 1 additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

“(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of \$10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

“(5) PAPER PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter may decide, *sua sponte* or upon motion of a participant, to determine issues on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

“(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

“(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

“(6) REGULATIONS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

“(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

“(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

“(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be not earlier than 4 months, and not later than 5 months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, the Copyright Royalty Judges may allow a participant in a proceeding to file an amended written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period specified in clause (iii).

“(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

“(II) In this chapter, the term ‘written direct statements’ means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

“(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

“(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

“(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may request of an opposing participant nonprivileged documents directly related to the written direct statement or written rebuttal statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production made to the Copyright Royalty Judges according to regulations adopted by the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection

(a)(2). Upon such motion, the Copyright Royalty Judges may order discovery pursuant to regulations established under this paragraph.

“(vi)(I) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, by means of written motion or on the record, request of an opposing participant or witness other relevant information and materials if absent the discovery sought the Copyright Royalty Judges’ resolution of the proceeding would be substantially impaired. In determining whether discovery will be granted under this clause, the Copyright Royalty Judges may consider—

“(aa) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

“(bb) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

“(cc) whether the participant seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

“(II) This clause shall not apply to any proceeding scheduled to commence after December 31, 2010.

“(vii) In a proceeding under this chapter to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories and the participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. The Copyright Royalty Judges shall resolve any disputes among similarly aligned participants to allocate the number of depositions or interrogatories permitted under this clause.

“(viii) The rules and practices in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this chapter to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

“(ix) In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness to appear and give testimony or to produce and permit inspection of documents or tangible things if the Copyright Royalty Judges’ resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this subparagraph shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact.

“(x) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period and shall take place outside the presence of the Copyright Royalty Judges.

“(xi) No evidence, including exhibits, may be submitted in the written direct statement

or written rebuttal statement of a participant without a sponsoring witness, except where the Copyright Royalty Judges have taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

“(C) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

“(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(x), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

“(2) REHEARINGS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

“(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver their initial determination concerning rates and terms to the participants in the proceeding.

“(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing, except as provided under subsection (d)(1).

“(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

“(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

“(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

“(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

“(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

“(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges. Any underpayment of royalties resulting from a rehearing shall be paid within the same period.

“(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

“(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may, with the approval of the Register of Copyrights, issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the Federal Register.

“(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

“(6) PUBLICATION OF DETERMINATION.—Following review of the determination by the Register of Copyrights under section 802(f)(1)(D), the Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

“(7) LATE PAYMENT.—A determination of Copyright Royalty Judges may include terms with respect to late payment, but in no way shall such terms prevent the copyright holder from asserting other rights or remedies provided under this title.

“(d) JUDICIAL REVIEW.—

“(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. Any participant that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

“(2) EFFECT OF RATES.—

“(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is ren-

dered on a later date. A transmission service shall be obligated to continue making payments under the rates and terms previously in effect until such time as rates and terms for the successor period are established. Whenever royalties pursuant to this section are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final determination of the Copyright Royalty Judges establishing rates and terms for a successor period or the exhaustion of all rehearings or appeals of such determination, if any, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates. Any underpayment of royalties by a copyright user shall be paid to the entity designated by the Copyright Royalty Judges within the same period.

“(B) OTHER CASES.—In cases where rates and terms have not, prior to the inception of an activity, been established for that particular activity under the relevant license, such rates and terms shall be retroactive to the inception of activity under the relevant license covered by such rates and terms. In other cases where rates and terms do not expire on a specified date, successor rates and terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, or by the Copyright Royalty Judges, or as agreed by the participants in a proceeding that would be bound by the rates and terms. Except as otherwise provided in this title, the rates and terms, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

“(C) OBLIGATION TO MAKE PAYMENTS.—

“(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from—

“(I) providing the statements of account and any report of use; and

“(II) paying the royalties required under the relevant determination or regulations.

“(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal. Any underpayment of royalties resulting from an appeal (and interest thereon, if ordered pursuant to paragraph (3)) shall be paid within the same period.

“(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

“(e) ADMINISTRATIVE MATTERS.—

“(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

“(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

“(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs incurred under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

“(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

“§ 804. Institution of proceedings

“(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

“(b) TIMING OF PROCEEDINGS.—

“(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

“(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or

by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3) (B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change is the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

“(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

“(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

“(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

“(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

“(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

“(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

“(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

“(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

“(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

“(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3) (B) and (C).

“(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

“(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

“(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

“(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

“(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

“§ 805. General rule for voluntarily negotiated agreements

“Any rates or terms under this title that—

“(1) are agreed to by participants to a proceeding under section 803(b)(3),

“(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

“(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.”.

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by striking the item relating to chapter 8 and inserting the following:

“8. Proceedings by Copyright Royalty Judges 801”.

SEC. 4. DEFINITION.

Section 101 is amended by inserting after the definition of “copies” the following:

“A ‘Copyright Royalty Judge’ is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.”.

SEC. 5. TECHNICAL AMENDMENTS.

(a) CABLE RATES.—Section 111(d) is amended—

(1) in paragraph (2), in the second sentence, by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges.”; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”;

(B) in subparagraph (B)—

(i) in the first sentence, by striking “Librarian of Congress shall, upon the recommendation of the Register of Copyrights,” and inserting “Copyright Royalty Judges shall”;

(ii) in the second sentence, by striking “Librarian determines” and inserting “Copyright Royalty Judges determine”;

(iii) in the third sentence—

(I) by striking “Librarian” each place it appears and inserting “Copyright Royalty Judges”;

(II) by striking “convene a copyright arbitration royalty panel” and inserting “conduct a proceeding”;

(C) in subparagraph (C), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”.

(b) EPHEMERAL RECORDINGS.—Section 112(e) is amended—

(1) in paragraph (3)—

(A) by amending the first sentence to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other periods as the parties may agree.”; and

(B) by striking the second sentence;

(C) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(D) in the fourth sentence, by striking “negotiation”;

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.”;

(B) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”;

(C) in the fourth sentence, by striking “its decision” and inserting “their decision”;

(D) in the fifth sentence, by striking “negotiated as provided” and inserting “described”;

(E) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(3) in paragraph (5), by striking “or decision by the Librarian of Congress” and inserting “, decision by the Librarian of Congress, or determination by the Copyright Royalty Judges”;

(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

(5) in paragraph (6)(A), as so redesignated, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”.

(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.”;

(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(iii) in the fourth sentence, by striking “negotiation”;

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.”;

(ii) in the second sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”;

(iii) in the second sentence, by striking “negotiated as provided” and inserting “described”;

(C) by amending subparagraph (C) to read as follows:

“(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”;

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending the first paragraph to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by eligible nonsubscription transmission services and transmissions by new subscription services specified by subsection

(d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.”;

(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(iii) in the fourth sentence, by striking “negotiation”;

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.”;

(ii) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”;

(iii) in the last sentence by striking “negotiated as provided” and inserting “described in”;

(C) by amending subparagraph (C) to read as follows:

“(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital audio radio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”;

(3) in paragraph (3), by striking “or decision by the Librarian of Congress” and inserting “, decision by the Librarian of Congress, or determination by the Copyright Royalty Judges”;

(4) in paragraph (4)—

(A) by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”;

(B) by adding after the first sentence “The notice and recordkeeping rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect unless and until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the functions of any designated agent authorized to collect and distribute royalty fees.”.

(d) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) is amended—

(1) in subparagraph (A)(ii), by striking “(F)” and inserting “(E)”;

(2) in subparagraph (B)—

(A) by striking “under this paragraph” and inserting “under this section”;

(B) by inserting “on a nonexclusive basis” after “common agents”;

(C) by striking “subparagraphs (C) through (F)” and inserting “this subparagraph and subparagraphs (C) through (E)”; and

(3) in subparagraph (C)—

(A) by amending the first sentence to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during periods beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree.”;

(B) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(C) in the fourth sentence, by striking “negotiation”;

(4) in subparagraph (D)—

(A) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to subparagraph (E), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C), such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.”;

(B) in the third sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(C) in the third sentence, by striking “negotiated as provided in subparagraphs (B) and (C)” and inserting “described”;

(5) in subparagraph (E)—

(A) in clause (i)—

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Librarian of Congress, Copyright Royalty Judges, or a copyright arbitration royalty panel to the extent those determinations were accepted by the Librarian of Congress”; and

(ii) in the second sentence, by striking ““(C), (D) or (F) shall be given effect” and inserting ““(C) or (D) shall be given effect as to digital phonorecord deliveries””; and

(B) in clause (ii)(I), by striking ““(C), (D) or (F)” each place it appears and inserting ““(C) or (D)””; and

(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

(1) in subsection (b), by amending paragraph (2) to read as follows:

“(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.”; and

(2) in subsection (c)—

(A) in the subsection heading, by striking “COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS” and inserting “DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES”; and

(B) by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges”.

(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(ii) by striking the second and third sentences;

(B) in paragraph (2), by striking “Librarian of Congress” and all that follows through the end of the sentence and inserting “Librarian of Congress, a copyright arbitration royalty panel, or the Copyright Royalty Judges, to the extent that they were accepted by the Librarian of Congress, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.”; and

(C) in paragraph (3)—

(i) in the second sentence—

(I) by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(II) by striking “paragraph (2).” and inserting “paragraph (2) or (3).”;

(ii) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(iii) by striking “(3) In” and all that follows through the end of the first sentence and inserting the following:

“(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

“(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.”;

(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

(A) by striking ““(b)(2)” and inserting ““(b)(2) or (3)””; and

(B) by striking ““(b)(3)” and inserting ““(b)(4)””; and

(C) by striking “a copyright arbitration royalty panel under subsection (b)(3)” and inserting “the Copyright Royalty Judges under subsection (b)(3), to the extent that they were accepted by the Librarian of Congress”;

(4) in subsection (d), as so redesignated—

(A) by striking “in the Copyright Office” and inserting “with the Copyright Royalty Judges”; and

(B) by striking “Register of Copyrights shall prescribe” and inserting “Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)”;

(5) in subsection (f), as so redesignated, by striking ““(d)” and inserting ““(c)”.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

(1) in paragraph (3), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”; and

(B) by amending subparagraphs (B) and (C) to read as follows:

“(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.”.

(h) DIGITAL AUDIO RECORDING DEVICES.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking “Librarian of Congress shall convene a copyright arbitration royalty panel which” and inserting “Copyright Royalty Judges”.

(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

(A) in subsection (a), by amending paragraph (1) to read as follows:

“(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.”; and

(B) by amending subsections (b) and (c) to read as follows:

“(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

“(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.”.

(4) DETERMINATION OF CERTAIN DISPUTES.—(A) Section 1010 is amended to read as follows:

“§ 1010. Determination of certain disputes

“(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

“(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

“(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

“(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

“(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.”.

(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

“1010. Determination of certain disputes.”.

SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act, except that the Librarian of Congress shall appoint 1 or more interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

(b) TRANSITION PROVISIONS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the date of enactment of this Act under the provisions of title 17, United States Code, as amended by this Act,

and pending on such date of enactment. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted. For purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced. The Librarian of Congress may terminate any proceeding commenced before the date of enactment of this Act pursuant to chapter 8 of title 17, United States Code, and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

(2) CERTAIN ROYALTY RATES PROCEEDINGS.—Notwithstanding any other provision of law, proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, shall be conducted pursuant to the provisions of title 17, United States Code, and the rules and practices in effect under that chapter on the day before any provision of this Act takes effect.

(3) PENDING PROCEEDINGS.—Notwithstanding paragraph (1), any proceedings to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for a statutory period commencing on or after January 1, 2005, shall be terminated upon the date of enactment of this Act and shall be null and void. The rates and terms in effect under section 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible non-subscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107-321) (including the amendments made by that Act) for the years 2003 through 2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of the first applicable effective date for successor terms and rates specified in section 804(b) (2) or (3)(A) of title 17, United States Code, or such later date as the parties may agree or the Copyright Royalty Judges may establish. For the period commencing January 1, 2005, an eligible small webcaster or a noncommercial webcaster, as defined in the regulations published by the Register of Copyrights pursuant to the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107-321) (including the amendments made by that Act), may elect to be subject to the rates and terms published in those regulations by complying with the procedures governing the election process set forth in those regulations not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. Until successor terms and rates have been established for the period commencing January 1, 2006, licensees shall continue to make royalty payments at the rates and on the terms previously in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

(4) INTERIM PROCEEDINGS.—Notwithstanding subsection (a), as soon as practicable after the date of enactment of this Act, the Copyright Royalty Judges or interim Copyright Royalty Judges shall publish the notice described in section 803(b)(1)(A) of title 17, United States Code, as amended by this Act, to initiate a proceeding

to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services and eligible non-subscription services for the period commencing January 1, 2006. The Copyright Royalty Judges or Interim Copyright Royalty Judges are authorized to cause that proceeding to take place as provided in subsection (b) of section 803 of that title within the time periods set forth in that subsection. Notwithstanding section 803(c)(1) of that title, the Copyright Royalty Judges shall not be required to issue their determination in that proceeding before the expiration of the statutory rates and terms in effect on December 31, 2004.

(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.

SA 3976. Ms. COLLINS (for Mr. INHOFE (for himself, Mr. JEFFORDS, Mr. BOND, and Mr. REID)) proposed an amendment to the bill S. 1134, to reauthorize and improve the programs authorized by the Public Works and Economic Development Act of 1965; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Economic Development Administration Reauthorization Act of 2004”.

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

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings and declarations.

Sec. 102. Definitions.

Sec. 103. Establishment of Economic Development partnerships.

Sec. 104. Coordination.

TITLE II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

Sec. 201. Grants for planning.

Sec. 202. Cost sharing.

Sec. 203. Supplementary grants.

Sec. 204. Regulations on relative needs and allocations.

Sec. 205. Grants for training, research, and technical assistance.

Sec. 206. Prevention of unfair competition.

Sec. 207. Grants for economic adjustment.

Sec. 208. Use of funds in projects constructed under projected cost.

Sec. 209. Special impact areas.

Sec. 210. Performance awards.

Sec. 211. Planning performance awards.

Sec. 212. Direct expenditure or redistribution by recipient.

Sec. 213. Brightfields demonstration program.

TITLE III—COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

Sec. 301. Eligibility of areas.

Sec. 302. Comprehensive Economic Development strategies.

TITLE IV—ECONOMIC DEVELOPMENT DISTRICTS

Sec. 401. Incentives.

Sec. 402. Provision of comprehensive Economic Development strategies to Regional Commissions.

TITLE V—ADMINISTRATION

Sec. 501. Economic Development information clearinghouse.

Sec. 502. Businesses desiring Federal contracts.

Sec. 503. Performance evaluations of grant recipients.

Sec. 504. Conforming amendments.

TITLE VI—MISCELLANEOUS

- Sec. 601. Annual report to Congress.
 Sec. 602. Relationship to assistance under other law.
 Sec. 603. Brownfields redevelopment report.
 Sec. 604. Savings clause
 Sec. 605. Sense of Congress regarding Economic Development Representatives.

TITLE VII—FUNDING

- Sec. 701. Authorization of appropriations.
 Sec. 702. Funding for grants for planning and grants for administrative expenses.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS AND DECLARATIONS.

Section 2 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121) is amended to read as follows:

“SEC. 2. FINDINGS AND DECLARATIONS.

“(a) FINDINGS.—Congress finds that—
 “(1) there continue to be areas of the United States experiencing chronic high unemployment, underemployment, outmigration, and low per capita incomes, as well as areas facing sudden and severe economic dislocations because of structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

“(2) economic growth in the States, cities, and rural areas of the United States is produced by expanding economic opportunities, expanding free enterprise through trade, developing and strengthening public infrastructure, and creating a climate for job creation and business development;

“(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging communities to develop a more competitive and diversified economic base by—

“(A) creating an environment that promotes economic activity by improving and expanding public infrastructure;

“(B) promoting job creation through increased innovation, productivity, and entrepreneurship; and

“(C) empowering local and regional communities experiencing chronic high unemployment and low per capita income to develop private sector business and attract increased private sector capital investment;

“(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private State, regional, tribal, and local organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

“(5) in order to avoid duplication of effort and achieve meaningful, long-lasting results, Federal, State, tribal, and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, and simplified and consistent requirements; and

“(6) Federal economic development efforts will be more effective if the efforts are coordinated with, and build upon, the trade, workforce investment, transportation, and technology programs of the United States.

“(b) DECLARATIONS.—In order to promote a strong and growing economy throughout the United States, Congress declares that—

“(1) assistance under this Act should be made available to both rural- and urban-distressed communities;

“(2) local communities should work in partnership with neighboring communities,

the States, Indian tribes, and the Federal Government to increase the capacity of the local communities to develop and implement comprehensive economic development strategies to alleviate economic distress and enhance competitiveness in the global economy;

“(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to support entrepreneurship to take advantage of the development opportunities afforded by technological innovation and expanding newly opened global markets; and

“(4) assistance under this Act should be made available to promote the productive reuse of abandoned industrial facilities and the redevelopment of brownfields.”.

SEC. 102. DEFINITIONS.

(a) ELIGIBLE RECIPIENT.—Section 3(4)(A) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122(4)(A)) is amended—

(1) by striking clause (i) and redesignating clauses (ii) through (vii) as clauses (i) through (vi), respectively; and

(2) in clause (iv) (as redesignated by paragraph (1)) by inserting “, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities,” after “State”.

(b) REGIONAL COMMISSIONS; UNIVERSITY CENTER.—Section 3 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122) is amended—

(1) by redesignating paragraphs (8), (9), and (10) as paragraphs (9), (10), and (11), respectively;

(2) by inserting after paragraph (7) the following:

“(8) REGIONAL COMMISSIONS.—The term ‘Regional Commissions’ means—

“(A) the Appalachian Regional Commission established under chapter 143 of title 40, United States Code;

“(B) the Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa et seq.);

“(C) the Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681–637 et seq.); and

“(D) the Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb et seq.)”; and

(3) by adding at the end the following:

“(12) UNIVERSITY CENTER.—The term ‘university center’ means an institution of higher education or a consortium of institutions of higher education established as a University Center for Economic Development under section 207(a)(2)(D).”.

SEC. 103. ESTABLISHMENT OF ECONOMIC DEVELOPMENT PARTNERSHIPS.

Section 101 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3131) is amended—

(1) in subsection (b), by striking “and multi-State regional organizations” and inserting “multi-State regional organizations, and nonprofit organizations”; and

(2) in subsection (d)(1), by striking “adjoining” each place it appears.

SEC. 104. COORDINATION.

Section 103 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3132) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The Secretary”;

(2) in subsection (a) (as designated by paragraph (1)), by inserting “Indian tribes,” after “districts.”; and

(3) by adding at the end the following:

“(b) MEETINGS.—To carry out subsection (a), or for any other purpose relating to eco-

nomics development activities, the Secretary may convene meetings with Federal agencies, State and local governments, economic development districts, Indian tribes, and other appropriate planning and development organizations.”.

TITLE II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

SEC. 201. GRANTS FOR PLANNING.

Section 203(d) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3143(d)) is amended—

(1) in paragraph (1), by inserting “, to the maximum extent practicable,” after “developed” the second place it appears;

(2) by striking paragraph (3) and inserting the following:

“(3) COORDINATION.—Before providing assistance for a State plan under this section, the Secretary shall consider the extent to which the State will consider local and economic development district plans.”; and

(3) in paragraph (4)—

(A) by striking “and” at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by adding after subparagraph (C) the following:

“(D) assist in carrying out the workforce investment strategy of a State;

“(E) promote the use of technology in economic development, including access to high-speed telecommunications; and”.

SEC. 202. COST SHARING.

(a) FEDERAL SHARE.—Section 204 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144) is amended by striking subsection (a) and inserting the following:

“(a) FEDERAL SHARE.—Except as provided in subsection (c), the Federal share of the cost of any project carried out under this title shall not exceed—

“(1) 50 percent; plus

“(2) an additional percent that—

“(A) shall not exceed 30 percent; and

“(B) is based on the relative needs of the area in which the project will be located, as determined in accordance with regulations promulgated by the Secretary.”.

(b) NON-FEDERAL SHARE.—Section 204(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144(b)) is amended by inserting “assumptions of debt,” after “equipment.”.

(c) INCREASE IN FEDERAL SHARE.—Section 204 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144) is amended by adding at the end the following:

“(c) INCREASE IN FEDERAL SHARE.—

“(1) INDIAN TRIBES.—In the case of a grant to an Indian tribe for a project under this title, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

“(2) CERTAIN STATES, POLITICAL SUBDIVISIONS, AND NONPROFIT ORGANIZATIONS.—In the case of a grant to a State, or a political subdivision of a State, that the Secretary determines has exhausted the effective taxing and borrowing capacity of the State or political subdivision, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted the effective borrowing capacity of the nonprofit organization, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

“(3) TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.—In the case of a grant provided under section 207, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project if the Secretary determines that the project funded by

the grant merits, and is not feasible without, such an increase.”.

SEC. 203. SUPPLEMENTARY GRANTS.

(a) IN GENERAL.—Section 205 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3145) is amended by striking subsection (b) and inserting the following:

“(b) SUPPLEMENTARY GRANTS.—Subject to subsection (c), in order to assist eligible recipients in taking advantage of designated Federal grant programs, on the application of an eligible recipient, the Secretary may make a supplementary grant for a project for which the recipient is eligible but for which the recipient cannot provide the required non-Federal share because of the economic situation of the recipient.”.

(b) REQUIREMENTS APPLICABLE TO SUPPLEMENTARY GRANTS.—Section 205(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3145(c)) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

“(1) AMOUNT OF SUPPLEMENTARY GRANTS.—The share of the project cost supported by a supplementary grant under this section may not exceed the applicable Federal share under section 204.

“(2) FORM OF SUPPLEMENTARY GRANTS.—The Secretary shall make supplementary grants by—

“(A) the payment of funds made available under this Act to the heads of the Federal agencies responsible for carrying out the applicable Federal programs; or

“(B) the award of funds under this Act, which will be combined with funds transferred from other Federal agencies in projects administered by the Secretary.”; and

(2) by striking paragraph (4).

SEC. 204. REGULATIONS ON RELATIVE NEEDS AND ALLOCATIONS.

Section 206 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3146) is amended—

(1) in paragraph (1)(C), by striking “and” at the end;

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

(3) by adding at the end the following:

“(3)(A) rural and urban economically distressed areas are not harmed by the establishment or implementation by the Secretary of a private sector leveraging goal for a project under this title;

“(B) any private sector leveraging goal established by the Secretary does not prohibit or discourage grant applicants under this title from public works in, or economic development of, rural or urban economically distressed areas; and

“(C) the relevant Committees of Congress are notified prior to making any changes to any private sector leveraging goal; and

“(4) grants made under this title promote job creation and will have a high probability of meeting or exceeding applicable performance requirements established in connection with the grants.”.

SEC. 205. GRANTS FOR TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 207(a)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147(a)(2)) is amended—

(1) by striking “and” at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (I); and

(3) by inserting after subparagraph (F) the following:

“(G) studies that evaluate the effectiveness of coordinating projects funded under this Act with projects funded under other Acts;

“(H) assessment, marketing, and establishment of business clusters; and”.

(b) COOPERATION REQUIREMENT.—Section 207(a) of the Public Works and Economic De-

velopment Act of 1965 (42 U.S.C. 3147(a)) is amended by striking paragraph (3) and inserting the following:

“(3) COOPERATION REQUIREMENT.—In the case of a project assisted under this section that is national or regional in scope, the Secretary may waive the provision in section 3(4)(A)(vi) requiring a nonprofit organization or association to act in cooperation with officials of a political subdivision of a State.”.

SEC. 206. PREVENTION OF UNFAIR COMPETITION.

(a) IN GENERAL.—Section 208 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3148) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 208.

SEC. 207. GRANTS FOR ECONOMIC ADJUSTMENT.

(a) ASSISTANCE TO MANUFACTURING COMMUNITIES.—Section 209(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)) is amended—

(1) in paragraph (3), by striking “or”;

(2) in paragraph (4), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(5) the loss of manufacturing jobs, for re-investing in and diversifying the economies of the communities.”.

(b) DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT; SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—Section 209 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149) is amended by striking subsection (d) and inserting the following:

“(d) SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—

“(1) IN GENERAL.—The Secretary shall promulgate regulations to maintain the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

“(2) EFFICIENT ADMINISTRATION.—The Secretary may—

“(A) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

“(B) assign or transfer assets of a revolving loan fund to third party for the purpose of liquidation, and the third party may retain assets of the fund to defray costs related to liquidation; and

“(C) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

“(3) TREATMENT OF ACTIONS.—An action taken by the Secretary under this subsection with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

“(4) PRESERVATION OF SECURITIES LAWS.—

“(A) NOT TREATED AS EXEMPTED SECURITIES.—No securities issued pursuant to paragraph (2)(C) shall be treated as exempted securities for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless exempted by rule or regulation of the Securities and Exchange Commission.

“(B) PRESERVATION.—Except as provided in subparagraph (A), no provision of this subsection or any regulation promulgated by the Secretary under this subsection supercedes or otherwise affects the application of the securities laws (as the term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization under that Commission.”.

SEC. 208. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

Section 211 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3151) is amended to read as follows:

“SEC. 211. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

“(a) IN GENERAL.—In the case of a grant to a recipient for a construction project under section 201 or 209, if the Secretary determines, before closeout of the project, that the cost of the project, based on the designs and specifications that were the basis of the grant, has decreased because of decreases in costs, the Secretary may approve, without further appropriation, the use of the excess funds (or a portion of the excess funds) by the recipient—

“(1) to increase the Federal share of the cost of a project under this title to the maximum percentage allowable under section 204; or

“(2) to improve the project.

“(b) OTHER USES OF EXCESS FUNDS.—Any amount of excess funds remaining after application of subsection (a) may be used by the Secretary for providing assistance under this Act.

“(c) TRANSFERRED FUNDS.—In the case of excess funds described in subsection (a) in projects using funds transferred from other Federal agencies pursuant to section 604, the Secretary shall—

“(1) use the funds in accordance with subsection (a), with the approval of the originating agency; or

“(2) return the funds to the originating agency.

“(d) REVIEW BY COMPTROLLER GENERAL.—

“(1) REVIEW.—The Comptroller General of the United States shall regularly review the implementation of this section.

“(2) REPORT.—Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller General on implementation of this subsection.”.

SEC. 209. SPECIAL IMPACT AREAS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) is amended by adding at the end the following:

“SEC. 214. SPECIAL IMPACT AREAS.

“(a) IN GENERAL.—On the application of an eligible recipient that is determined by the Secretary to be unable to comply with the requirements of section 302, the Secretary may waive, in whole or in part, the requirements of section 302 and designate the area represented by the recipient as a special impact area.

“(b) CONDITIONS.—The Secretary may make a designation under subsection (a) only after determining that—

“(1) the project will fulfill a pressing need of the area; and

“(2) the project will—

“(A) be useful in alleviating or preventing conditions of excessive unemployment or underemployment; or

“(B) assist in providing useful employment opportunities for the unemployed or underemployed residents in the area.

“(c) NOTIFICATION.—At the time of the designation under subsection (a), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notice of the designation, including a justification for the designation.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 213 the following:

“Sec. 214. Special impact areas.”.

SEC. 210. PERFORMANCE AWARDS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 209) is amended by adding at the end the following:

“SEC. 215. PERFORMANCE AWARDS.

“(a) IN GENERAL.—The Secretary may make a performance award in connection with a grant made, on or after the date of enactment of this section, to an eligible recipient for a project under section 201 or 209.

“(b) PERFORMANCE MEASURES.—

“(1) REGULATIONS.—The Secretary shall promulgate regulations to establish performance measures for making performance awards under subsection (a).

“(2) CONSIDERATIONS.—In promulgating regulations under paragraph (1), the Secretary shall consider the inclusion of performance measures that assess—

“(A) whether the recipient meets or exceeds scheduling goals;

“(B) whether the recipient meets or exceeds job creation goals;

“(C) amounts of private sector capital investments leveraged; and

“(D) such other factors as the Secretary determines to be appropriate.

“(c) AMOUNT OF AWARDS.—

“(1) IN GENERAL.—The Secretary shall base the amount of a performance award made under subsection (a) in connection with a grant on the extent to which a recipient meets or exceeds performance measures established in connection with the grant.

“(2) MAXIMUM AMOUNT.—The amount of a performance award may not exceed 10 percent of the amount of the grant.

“(d) USE OF AWARDS.—A recipient of a performance award under subsection (a) may use the award for any eligible purpose under this Act, in accordance with section 602 and such regulations as the Secretary may promulgate.

“(e) FEDERAL SHARE.—Notwithstanding section 204, the funds of a performance award may be used to pay up to 100 percent of the cost of an eligible project or activity.

“(f) TREATMENT IN MEETING NON-FEDERAL SHARE REQUIREMENTS.—For the purposes of meeting the non-Federal share requirements under this, or any other, Act the funds of a performance award shall be treated as funds from a non-Federal source.

“(g) TERMS AND CONDITIONS.—In making performance awards under subsection (a), the Secretary shall establish such terms and conditions as the Secretary considers to be appropriate.

“(h) FUNDING.—The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.

“(i) REPORTING REQUIREMENT.—The Secretary shall include information regarding performance awards made under this section in the annual report required under section 603.

“(j) REVIEW BY COMPTROLLER GENERAL.—

“(1) REVIEW.—The Comptroller General shall regularly review the implementation of this section.

“(2) REPORT.—Not later than 1 year after the date of enactment of this section, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the

findings of the Comptroller on implementation of this subsection.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 214 the following:

“Sec. 215. Performance awards.”.

SEC. 211. PLANNING PERFORMANCE AWARDS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 210) is amended by adding at the end the following:

“SEC. 216. PLANNING PERFORMANCE AWARDS.

“(a) IN GENERAL.—The Secretary may make a planning performance award in connection with a grant made, on or after the date of enactment of this section, to an eligible recipient for a project under this title located in an economic development district.

“(b) ELIGIBILITY.—The Secretary may make a planning performance award to an eligible recipient under subsection (a) in connection with a grant for a project if the Secretary determines before closeout of the project that—

“(1) the recipient actively participated in the economic development activities of the economic development district in which the project is located;

“(2) the project is consistent with the comprehensive economic development strategy of the district;

“(3) the recipient worked with Federal, State, and local economic development entities throughout the development of the project; and

“(4) the project was completed in accordance with the comprehensive economic development strategy of the district.

“(c) MAXIMUM AMOUNT.—The amount of a planning performance award made under subsection (a) in connection with a grant may not exceed 5 percent of the amount of the grant.

“(d) USE OF AWARDS.—A recipient of a planning performance award under subsection (a) shall use the award to increase the Federal share of the cost of a project under this title.

“(e) FEDERAL SHARE.—Notwithstanding section 204, the funds of a planning performance award may be used to pay up to 100 percent of the cost of a project under this title.

“(f) FUNDING.—The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 215 the following:

“Sec. 216. Planning performance awards.”.

SEC. 212. DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 211) is amended by adding at the end the following:

“SEC. 217. DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.

“(a) IN GENERAL.—Subject to subsection (b), a recipient of a grant under section 201, 203, or 207 may directly expend the grant funds or may redistribute the funds in the form of a subgrant to other eligible recipients to fund required components of the scope of work approved for the project.

“(b) LIMITATION.—A recipient may not redistribute grant funds received under section 201 or 203 to a for-profit entity.

“(c) ECONOMIC ADJUSTMENT.—Subject to subsection (d), a recipient of a grant under section 209 may directly expend the grant funds or may redistribute the funds to public and private entities in the form of a grant, loan, loan guarantee, payment to reduce interest on a loan guarantee, or other appropriate assistance.

“(d) LIMITATION.—Under subsection (c), a recipient may not provide any grant to a private for-profit entity.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 216 the following:

“Sec. 217. Direct expenditure or redistribution by recipient.”.

SEC. 213. BRIGHTFIELDS DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 212) is amended by adding at the end the following:

“SEC. 218. BRIGHTFIELDS DEMONSTRATION PROGRAM.

“(a) DEFINITION OF BRIGHTFIELD SITE.—In this section, the term ‘brightfield site’ means a brownfield site that is redeveloped through the incorporation of 1 or more solar energy technologies.

“(b) DEMONSTRATION PROGRAM.—On the application of an eligible recipient, the Secretary may make a grant for a project for the development of a brightfield site if the Secretary determines that the project will—

“(1) use 1 or more solar energy technologies to develop abandoned or contaminated sites for commercial use; and

“(2) improve the commercial and economic opportunities in the area in which the project is located.

“(c) SAVINGS CLAUSE.—To the extent that any portion of a grant awarded under subsection (b) involves remediation, the remediation shall be subject to section 612.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 217 (as added by section 212(b)) the following:

“Sec. 218. Brightfields demonstration program.”.

TITLE III—COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

SEC. 301. ELIGIBILITY OF AREAS.

Section 301(c)(1) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(c)(1)) is amended by inserting after “most recent Federal data available” the following: “(including data available from the Bureau of Economic Analysis, the Bureau of Labor Statistics, the Census Bureau, the Bureau of Indian Affairs, or any other Federal source determined by the Secretary to be appropriate)”.

SEC. 302. COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES.

(a) IN GENERAL.—Section 302(a)(3)(A) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3162(a)(3)(A)) is amended by inserting “maximizes effective development and use of the workforce consistent with any applicable State or local workforce investment strategy, promotes the use of technology in economic development (including access to high-speed telecommunications),” after “access,”.

(b) APPROVAL OF OTHER PLAN.—Section 302(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3162(c)) is amended—

(1) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”; and

(2) by adding at the end the following:

“(2) EXISTING STRATEGY.—To the maximum extent practicable, a plan submitted under this paragraph shall be consistent and coordinated with any existing comprehensive economic development strategy for the area.”.

TITLE IV—ECONOMIC DEVELOPMENT DISTRICTS

SEC. 401. INCENTIVES.

(a) IN GENERAL.—Section 403 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3173) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 403.

SEC. 402. PROVISION OF COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES TO REGIONAL COMMISSIONS.

(a) IN GENERAL.—Section 404 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3174) is amended to read as follows:

“SEC. 404. PROVISION OF COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES TO REGIONAL COMMISSIONS.

“If any part of an economic development district is in a region covered by 1 or more of the Regional Commissions, the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the affected Regional Commission.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 404 and inserting the following:

“Sec. 404. Provision of comprehensive economic development strategies to Regional Commissions.”.

TITLE V—ADMINISTRATION

SEC. 501. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE.

Section 502 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3192) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) maintain a central information clearinghouse on the Internet with—

“(A) information on economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal Government;

“(B) links to State economic development organizations; and

“(C) links to other appropriate economic development resources;”;

(2) by striking paragraph (2) and inserting the following:

“(2) assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal and State laws in locating and applying for the assistance;”;

(3) by striking the period at the end of paragraph (3) and inserting “; and”; and

(4) by adding at the end the following:

“(4) obtain appropriate information from other Federal agencies needed to carry out the duties under this Act.”.

SEC. 502. BUSINESSES DESIRING FEDERAL CONTRACTS.

(a) IN GENERAL.—Section 505 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3195) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 505.

SEC. 503. PERFORMANCE EVALUATIONS OF GRANT RECIPIENTS.

(a) IN GENERAL.—Section 506(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3196(c)) is amended by striking “after the effective date of the Economic Development Administration Reform Act of 1998”.

(b) EVALUATION CRITERIA.—Section 506(d)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3196(d)(2)) is amended by inserting “program performance,” after “applied research.”.

SEC. 504. CONFORMING AMENDMENTS.

Section 602 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3212) is amended—

(1) in the first sentence, by striking “in accordance with” and all that follows before the period at the end and inserting “in accordance with subchapter IV of chapter 31 of title 40, United States Code”; and

(2) in the third sentence, by striking “section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)” and inserting “section 3145 of title 40, United States Code”.

TITLE VI—MISCELLANEOUS

SEC. 601. ANNUAL REPORT TO CONGRESS.

Section 603 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3213) is amended—

(1) by striking “Not later” and inserting the following:

“(a) IN GENERAL.—Not later”; and

(2) by adding at the end the following:

“(b) INCLUSIONS.—Each report required under subsection (a) shall—

“(1) include a list of all grant recipients by State, including the projected private sector dollar to Federal dollar investment ratio for each grant recipient;

“(2) include a discussion of any private sector leveraging goal with respect to grants awarded to—

“(A) rural and urban economically distressed areas; and

“(B) highly distressed areas; and

“(3) after the completion of a project, include the realized private sector dollar to Federal dollar investment ratio for the project.”.

SEC. 602. RELATIONSHIP TO ASSISTANCE UNDER OTHER LAW.

Section 609 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3219) is amended—

(1) by striking subsection (a); and

(2) by striking “(b) ASSISTANCE UNDER OTHER ACTS.—”.

SEC. 603. BROWNFIELDS REDEVELOPMENT REPORT.

(a) IN GENERAL.—Title VI of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3171 et seq.) is amended by adding at the end the following:

“SEC. 611. BROWNFIELDS REDEVELOPMENT REPORT.

“(a) DEFINITION OF BROWNFIELD SITE.—In this section, the term ‘brownfield site’ has the meaning given the term in section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39)).

“(b) REPORT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section,

the Comptroller General shall prepare a report that evaluates the grants made by the Economic Development Administration for the economic development of brownfield sites.

“(2) CONTENTS.—The report shall—

“(A) identify each project conducted during the previous 10-year period in which grant funds have been used for brownfield sites redevelopment activities; and

“(B) include for each project a description of—

“(i) the type of economic development activities conducted;

“(ii) if remediation activities were conducted—

“(I) the type of remediation activities; and

“(II) the amount of grant money used for those activities in dollars and as a percentage of the total grant award;

“(iii) the economic development and environmental standards applied, if applicable;

“(iv) the economic development impact of the project;

“(v) the role of Federal, State, or local environmental agencies, if any; and

“(vi) public participation in the project.

“(3) SUBMISSION OF REPORT.—The Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a copy of the report.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 610 the following:

“Sec. 611. Brownfields redevelopment report.”.

SEC. 604. SAVINGS CLAUSE.

(a) IN GENERAL.—Title VI of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3171 et seq.) (as amended by section 603(a)) is amended by adding at the end the following:

“SEC. 612. SAVINGS CLAUSE.

“To the extent that any portion of grants made under this Act are used for an economic development project that involves remediation, the remediation shall be conducted in compliance with all applicable Federal, State, and local laws and standards.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 611 (as added by section 603(b)) the following:

“Sec. 612. Savings clause.”.

SEC. 605. SENSE OF CONGRESS REGARDING ECONOMIC DEVELOPMENT REPRESENTATIVES.

(a) FINDINGS.—Congress finds that—

(1) planning and coordination among Federal agencies, State and local governments, Indian tribes, and economic development districts is vital to the success of an economic development program;

(2) economic development representatives of the Economic Development Administration provide distressed communities with the technical assistance necessary to foster this planning and coordination; and

(3) in the 5 years preceding the date of enactment of this Act, the number of economic development representatives has declined by almost 25 percent.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should maintain a sufficient number of economic development representatives to ensure that the Economic Development Administration is able to provide effective assistance to distressed

communities and foster economic growth and development among the States.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 701 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231) is amended to read as follows:

“SEC. 701. GENERAL AUTHORIZATION OF APPROPRIATIONS.

“(a) ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS.—There are authorized to be appropriated for economic development assistance programs to carry out this Act, to remain available until expended—

- “(1) \$400,000,000 for fiscal year 2004;
- “(2) \$425,000,000 for fiscal year 2005;
- “(3) \$450,000,000 for fiscal year 2006;
- “(4) \$475,000,000 for fiscal year 2007; and
- “(5) \$500,000,000 for fiscal year 2008.”

“(b) SALARIES AND EXPENSES.—There are authorized to be appropriated for salaries and expenses of administering this Act, to remain available until expended—

- “(1) \$33,377,000 for fiscal year 2004; and
- “(2) such sums as are necessary for each fiscal year thereafter.”

SEC. 702. FUNDING FOR GRANTS FOR PLANNING AND GRANTS FOR ADMINISTRATIVE EXPENSES.

(a) IN GENERAL.—Title VII of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231 et seq.) is amended by adding at the end the following:

“SEC. 704. FUNDING FOR GRANTS FOR PLANNING AND GRANTS FOR ADMINISTRATIVE EXPENSES.

“Of the amounts made available under section 701 for each fiscal year, not less than \$27,000,000 shall be made available for grants provided under section 203.”

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 703 the following:

“Sec. 704. Funding for grants for planning and grants for administrative expenses”.

SA 3977. Ms. COLLINS (for herself and Mr. LIEBERMAN) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

On page 4, beginning on line 10, strike “information gathered, and activities” and inserting “foreign intelligence gathered, and information gathering and other activities”.

On page 4, line 16, insert before the period the following: “, but does not include personnel, physical, document, or communications security programs”.

On page 23, line 8, strike the period and insert “as it pertains to those programs, projects, and activities within the National Intelligence Program”.

On page 24, line 10, insert “transactional deposit” after “establish”.

On page 181, line 9, insert “or involving intelligence acquired through clandestine means” before the period.

SA 3978. Ms. COLLINS (for Mr. ENSIGN) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

At the end, add the following:

TITLE IV—OTHER MATTERS

SEC. 401. RESPONSIBILITIES AND FUNCTIONS OF CONSULAR OFFICERS.

(a) INCREASED NUMBER OF CONSULAR OFFICERS.—The Secretary of State, in each of fiscal years 2006 through 2009, may increase by 150 the number of positions for consular officers above the number of such positions for which funds were allotted for the preceding fiscal year.

(b) LIMITATION ON USE OF FOREIGN NATIONALS FOR VISA SCREENING.—

(1) IMMIGRANT VISAS.—Subsection (b) of section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following: “All immigrant visa applications shall be reviewed and adjudicated by a consular officer.”

(2) NONIMMIGRANT VISAS.—Subsection (d) of such section is amended by adding at the end the following: “All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.”

(c) TRAINING FOR CONSULAR OFFICERS IN DETECTION OF FRAUDULENT DOCUMENTS.—Section 305(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1734(a)) is amended by adding at the end the following: “As part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.”

(d) ASSIGNMENT OF ANTI-FRAUD SPECIALISTS.—

(1) SURVEY REGARDING DOCUMENT FRAUD.—The Secretary of State, in coordination with the Secretary of Homeland Security, shall conduct a survey of each diplomatic and consular post at which visas are issued to assess the extent to which fraudulent documents are presented by visa applicants to consular officers at such posts.

(2) REQUIREMENT FOR SPECIALIST.—

(A) IN GENERAL.—Not later than July 31, 2005, the Secretary of State shall, in coordination with the Secretary of Homeland Security, identify the diplomatic and consular posts at which visas are issued that experience the greatest frequency of presentation of fraudulent documents by visa applicants. The Secretary of State shall assign or designate at each such post at least one full-time anti-fraud specialist employed by the Department of State to assist the consular officers at each such post in the detection of such fraud.

(B) EXCEPTIONS.—The Secretary of State is not required to assign or designate a specialist as described in subparagraph (A) at a diplomatic and consular post if an employee of the Department of Homeland Security is assigned on a full-time basis to such post under the authority in section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236).

SEC. 402. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

In each of fiscal years 2006 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 1,000 the number of positions for full-time active duty border patrol agents within the Department of Homeland Security above the number of such positions for which funds were made available during the preceding fiscal year. Of the additional border patrol agents, in each fiscal year not less than 20 percent of such agents shall be assigned to duty stations along the northern border of the United States.

SEC. 403. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

In each of fiscal years 2006 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 800 the number of positions for full-time active duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) above the number of such positions for which funds were made available during the preceding fiscal year.

SA 3979. Ms. COLLINS (for Mr. KYL) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

At the end, add the following new title:

TITLE IV—VISA REQUIREMENTS

SEC. 401. IN PERSON INTERVIEWS OF VISA APPLICANTS.

(a) REQUIREMENT FOR INTERVIEWS.—Section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following new subsection:

“(h) Notwithstanding any other provision of this Act, the Secretary of State shall require every alien applying for a non-immigrant visa—

“(1) who is at least 12 years of age and not more than 65 years of age to submit to an in person interview with a consular officer unless the requirement for such interview is waived—

“(A) by a consular official and such alien is within that class of nonimmigrants enumerated in section 101(a)(15)(A) or 101(a)(15)(G) or is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof;

“(B) by a consular official and such alien is applying for a visa—

“(i) not more than 12 months after the date on which the alien’s prior visa expired;

“(ii) for the classification under section 101(a)(15) for which such prior visa was issued;

“(iii) from the consular post located in the country in which the alien is a national; and

“(iv) the consular officer has no indication that the alien has not complied with the immigration laws and regulations of the United States; or

“(C) by the Secretary of State if the Secretary determines that such waiver is—

“(i) in the national interest of the United States; or

“(ii) necessary as a result of unusual circumstances; and

“(2) notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien—

“(A) is not a national of the country in which the alien is applying for a visa;

“(B) was previously refused a visa, unless such refusal was overcome or a waiver of ineligibility has been obtained;

“(C) is listed in the Consular Lookout and Support System (or successor system at the Department of State);

“(D) may not obtain a visa until a security advisory opinion or other Department of State clearance is issued unless such alien is—

“(i) within that class of nonimmigrants enumerated in section 101(a)(15)(A) or 101(a)(15)(G); and

“(ii) not a national of a country that is officially designated by the Secretary of State as a state sponsor of terrorism; or

“(E) is identified as a member of a group or sector that the Secretary of State determines—

“(i) poses a substantial risk of submitting inaccurate information in order to obtain a visa;

“(ii) has historically had visa applications denied at a rate that is higher than the average rate of such denials; or

“(iii) poses a security threat to the United States.”.

SEC. 402. VISA APPLICATION REQUIREMENTS.

Section 222(c) of the Immigration and Nationality Act (8 U.S.C. 1202(c)) is amended by inserting “The alien shall provide complete and accurate information in response to any request for information contained in the application.” after the second sentence.

SEC. 403. EFFECTIVE DATE.

Notwithstanding section 341 or any other provision of this Act, this title shall take effect 90 days after date of the enactment of this Act.

SA 3980. Mr. LIEBERMAN (for Mr. SCHUMER) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ____ REGIONAL MODEL STRATEGIC PLAN PILOT PROJECTS.

(a) **PILOT PROJECTS.**—Consistent with sections 302 and 430 of the Homeland Security Act of 2002 (6 U.S.C. 182, 238), not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in coordination with the Executive Director of the Office of State and Local Government Coordination and Preparedness and the Undersecretary for Science and Technology, shall establish not fewer than 2 pilot projects in high threat urban areas or regions that are likely to implement a national model strategic plan.

(b) **PURPOSES.**—The purposes of the pilot projects required by this section shall be to develop a regional strategic plan to foster interagency communication in the area in which it is established and coordinate the gathering of all Federal, State, and local first responders in that area, consistent with the national strategic plan developed by the Department of Homeland Security.

(c) **SELECTION CRITERIA.**—In selecting urban areas for the location of pilot projects under this section, the Secretary shall consider—

(1) the level of threat risk to the area, as determined by the Department of Homeland Security;

(2) the number of Federal, State, and local law enforcement agencies located in the area;

(3) the number of potential victims from a large scale terrorist attack in the area; and

(4) such other criteria reflecting a community's risk and vulnerability as the Secretary determines is appropriate.

(d) **INTERAGENCY ASSISTANCE.**—The Secretary of Defense shall provide assistance to the Secretary of Homeland Security, as necessary for the development of the pilot projects required by this section, including examining relevant standards, equipment, and protocols in order to improve interagency communication among first responders.

(e) **REPORTS TO CONGRESS.**—The Secretary of Homeland Security shall submit to Congress—

(1) an interim report regarding the progress of the interagency communications

pilot projects required by this section 6 months after the date of enactment of this Act; and

(2) a final report 18 months after that date of enactment.

(f) **FUNDING.**—There are authorized to be made available to the Secretary of Homeland Security, such sums as may be necessary to carry out this section.

SA 3981. Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) proposed an amendment to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

Strike all after the resolving clause and insert the following:

SEC. 100. PURPOSE.

It is the purpose of titles I through V of this resolution to improve the effectiveness of the Senate Select Committee on Intelligence, especially with regard to its oversight of the Intelligence Community of the United States Government, and to improve the Senate's oversight of homeland security.

TITLE I—HOMELAND SECURITY OVERSIGHT REFORM

SEC. 101. HOMELAND SECURITY.

(a) **COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS.**—The Committee on Governmental Affairs is renamed as the Committee on Homeland Security and Governmental Affairs.

(b) **JURISDICTION.**—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(1) Department of Homeland Security, except matters relating to the Coast Guard, the Transportation Security Administration, the Federal Law Enforcement Training Center, and the revenue functions of the Customs Service.

(2) Archives of the United States.

(3) Budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.

(4) Census and collection of statistics, including economic and social statistics.

(5) Congressional organization, except for any part of the matter that amends the rules or orders of the Senate.

(6) Federal Civil Service.

(7) Government information.

(8) Intergovernmental relations.

(9) Municipal affairs of the District of Columbia, except appropriations therefor.

(10) Organization and management of United States nuclear export policy.

(11) Organization and reorganization of the executive branch of the Government.

(12) Postal Service.

(13) Status of officers and employees of the United States, including their classification, compensation, and benefits.

(c) **ADDITIONAL DUTIES.**—The committee shall have the duty of—

(1) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

(2) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;

(3) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(4) studying the intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organiza-

tions of which the United States is a member.

(d) **JURISDICTION OF SENATE COMMITTEES.**—The jurisdiction of the Committee on Homeland Security and Governmental Affairs provided in subsection (b) shall supersede the jurisdiction of any other committee of the Senate provided in the rules of the Senate.

TITLE II—INTELLIGENCE OVERSIGHT REFORM

SEC. 201. INTELLIGENCE OVERSIGHT.

(a) **COMMITTEE ON ARMED SERVICES MEMBERSHIP.**—Section 2(a)(3) of Senate Resolution 400, agreed to May 19, 1976 (94th Congress) (referred to in this section as “S. Res. 400”) is amended by—

(1) inserting “(A)” after “(3)”; and

(2) inserting at the end the following:

“(B) The Chairman and Ranking Member of the Committee on Armed Services (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.”.

(b) **NUMBER OF MEMBERS.**—Section 2(a) of S. Res. 400 is amended—

(1) in paragraph (1), by inserting “not to exceed” before “fifteen members”; and

(2) in paragraph (1)(E), by inserting “not to exceed” before “seven”; and

(3) in paragraph (2), by striking the second sentence and inserting “Of any members appointed under paragraph (1)(E), the majority leader shall appoint the majority members and the minority leader shall appoint the minority members, with the majority having a one vote margin.”.

(c) **ELIMINATION OF TERM LIMITS.**—Section 2 of Senate Resolution 400, 94th Congress, agreed to May 19, 1976, is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

(d) **APPOINTMENT OF CHAIRMAN AND RANKING MEMBER.**—Section 2(b) of S. Res. 400, as redesignated by subsection (c) of this section, is amended by striking the first sentence and inserting the following: “At the beginning of each Congress, the Majority Leader of the Senate shall select a chairman of the select Committee and the Minority Leader shall select a vice chairman for the select Committee.”.

(e) **SUBCOMMITTEES.**—Section 2 of S. Res. 400, as amended by subsections (a) through (d), is amended by adding at the end the following:

“(c) The select Committee may be organized into subcommittees. Each subcommittee shall have a chairman and a vice chairman who are selected by the Chairman and Vice Chairman of the select Committee, respectively.”.

(f) **REPORTS.**—Section 4(a) of S. Res. 400 is amended by inserting “, but not less than quarterly,” after “periodic”.

(g) **STAFF.**—Section 15 of S. Res. 400 is amended to read as follows:

“SEC. 15. (a) The select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

“(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces, and shall have

full access to select Committee staff, information, records, and databases.

“(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee clearance requirements for employment by the select Committee.”

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

“SEC. 17. (a) The select Committee shall have final responsibility for reviewing, holding hearings, and voting on civilian persons nominated by the President to fill a position within the intelligence community that requires the advice and consent of the Senate.

“(b) Other committees with jurisdiction over the nominees’ executive branch department may hold hearings and interviews with that person.”

TITLE III—COMMITTEE STATUS

SEC. 301. COMMITTEE STATUS.

(a) HOMELAND SECURITY.—The Committee on Homeland Security and Governmental Affairs shall be treated as the Committee on Governmental Affairs listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

(b) INTELLIGENCE.—The Select Committee on Intelligence shall be treated as a committee listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

TITLE IV—INTELLIGENCE-RELATED SUBCOMMITTEES

SEC. 401. SUBCOMMITTEE RELATED TO INTELLIGENCE OVERSIGHT.

(a) ESTABLISHMENT.—There is established in the Select Committee on Intelligence a Subcommittee on Oversight which shall be in addition to any other subcommittee established by the select Committee.

(b) RESPONSIBILITY.—The Subcommittee on Oversight shall be responsible for ongoing oversight of intelligence activities.

SEC. 402. SUBCOMMITTEE RELATED TO INTELLIGENCE APPROPRIATIONS.

(a) ESTABLISHMENT.—There is established in the Committee on Appropriations a Subcommittee on Intelligence. The Subcommittee on Military Construction shall be combined with the Subcommittee on Defense into 1 subcommittee.

(b) JURISDICTION.—The Subcommittee on Intelligence of the Committee on Appropriations shall have jurisdiction over funding for intelligence matters.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This resolution shall take effect on the convening of the 109th Congress.

SA 3982. Mr. FRIST (for Mr. HATCH (for himself and Mr. BIDEN)) proposed an amendment to the bill S. 2195, to amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relating to steroids and steroid precursors; as follows:

In section 4(c) in the matter proposed to be inserted, strike “primarily”.

SA 3983. Mr. MCCONNELL (for Mr. MCCAIN (for himself and Mr. NELSON of Florida)) proposed an amendment to the bill H.R. 2608, to reauthorize the National Earthquake Hazards Reduction Program, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—EARTHQUAKE HAZARD REDUCTION

Sec. 101. Short title.

Sec. 102. Definitions.

Sec. 103. National earthquake hazards reduction program.

Sec. 104. Authorization of appropriations.

TITLE II—WINDSTORM IMPACT REDUCTION

Sec. 201. Short title.

Sec. 202. Findings.

Sec. 203. Definitions.

Sec. 204. National windstorm impact reduction program.

Sec. 205. National advisory committee on windstorm impact reduction.

Sec. 206. Savings clause.

Sec. 207. Authorization of appropriations.

Sec. 208. Biennial report.

Sec. 209. Coordination.

TITLE III—COMMERCIAL SPACE TRANSPORTATION

Sec. 301. Authorization of appropriations.

TITLE I—EARTHQUAKE HAZARD REDUCTION

SEC. 101. SHORT TITLE.

This title may be cited as the “National Earthquake Hazards Reduction Program Reauthorization Act of 2004”.

SEC. 102. DEFINITIONS.

Section 4 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.) is amended by adding at the end the following new paragraphs:

“(8) The term ‘Interagency Coordinating Committee’ means the Interagency Coordinating Committee on Earthquake Hazards Reduction established under section 5(a).

“(9) The term ‘Advisory Committee’ means the Advisory Committee established under section 5(a)(5).”

SEC. 103. NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM.

Section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)) is amended—

(1) by amending subsection (a) to read as follows:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established the National Earthquake Hazards Reduction Program.

“(2) PROGRAM ACTIVITIES.—The activities of the Program shall be designed to—

“(A) develop effective measures for earthquake hazards reduction;

“(B) promote the adoption of earthquake hazards reduction measures by Federal, State, and local governments, national standards and model code organizations, architects and engineers, building owners, and others with a role in planning and constructing buildings, structures, and lifelines through—

“(i) grants, contracts, cooperative agreements, and technical assistance;

“(ii) development of standards, guidelines, and voluntary consensus codes for earthquake hazards reduction for buildings, structures, and lifelines;

“(iii) development and maintenance of a repository of information, including technical data, on seismic risk and hazards reduction; and

“(C) improve the understanding of earthquakes and their effects on communities, buildings, structures, and lifelines, through interdisciplinary research that involves engineering, natural sciences, and social, economic, and decisions sciences; and

“(D) develop, operate, and maintain an Advanced National Seismic Research and Monitoring System established under section 13 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7707), the George E. Brown, Jr. Network for Earthquake Engineering Simulation established under section 14 of that

Act (42 U.S.C. 7708), and the Global Seismographic Network.

“(3) INTERAGENCY COORDINATING COMMITTEE ON EARTHQUAKE HAZARDS REDUCTION.—

“(A) IN GENERAL.—There is established an Interagency Coordinating Committee on Earthquake Hazards Reduction chaired by the Director of the National Institute of Standards and Technology (referred to in this subsection as the ‘Director’).

“(B) MEMBERSHIP.—The committee shall be composed of the directors of—

“(i) the Federal Emergency Management Agency;

“(ii) the United States Geological Survey;

“(iii) the National Science Foundation;

“(iv) the Office of Science and Technology Policy; and

“(v) the Office of Management and Budget.

“(C) MEETINGS.—The Committee shall meet not less than 3 times a year at the call of the Director.

“(D) PURPOSE AND DUTIES.—The Interagency Coordinating Committee shall oversee the planning, management, and coordination of the Program. The Interagency Coordinating Committee shall—

“(i) develop, not later than 6 months after the date of enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 2004 and update periodically—

“(I) a strategic plan that establishes goals and priorities for the Program activities described under subsection (a)(2); and

“(II) a detailed management plan to implement such strategic plan; and

“(ii) develop a coordinated interagency budget for the Program that will ensure appropriate balance among the Program activities described under subsection (a)(2), and, in accordance with the plans developed under clause (i), submit such budget to the Director of the Office of Management and Budget at the time designated by that office for agencies to submit annual budgets.

“(4) ANNUAL REPORT.—The Interagency Coordinating Committee shall transmit, at the time of the President’s budget request to Congress, an annual report to the Committee on Science and the Committee on Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate. Such report shall include—

“(A) the Program budget for the current fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

“(B) the proposed Program budget for the next fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

“(C) a description of the activities and results of the Program during the previous year, including an assessment of the effectiveness of the Program in furthering the goals established in the strategic plan under (3)(A);

“(D) a description of the extent to which the Program has incorporated the recommendations of the Advisory Committee;

“(E) a description of activities, including budgets for the current fiscal year and proposed budgets for the next fiscal year, that are carried out by Program agencies and contribute to the Program, but are not included in the Program; and

“(F) a description of the activities, including budgets for the current fiscal year and proposed budgets for the following fiscal year, related to the grant program carried out under subsection (b)(2)(A)(i).

“(5) ADVISORY COMMITTEE.—

“(A) IN GENERAL.—The Director shall establish an Advisory Committee on Earthquake Hazards Reduction of at least 11 members, none of whom may be an employee (as defined in subparagraphs (A) through (F) of section 7342(a)(1) of title 5, United States Code, including representatives of research and academic institutions, industry standards development organizations, State and local government, and financial communities who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines. The recommendations of the Advisory Committee shall be considered by Federal agencies in implementing the Program.

“(B) ASSESSMENT.—The Advisory Committee shall assess—

“(i) trends and developments in the science and engineering of earthquake hazards reduction;

“(ii) effectiveness of the Program in carrying out the activities under (a)(2);

“(iii) the need to revise the Program; and

“(iv) the management, coordination, implementation, and activities of the Program.

“(C) REPORT.—Not later than 1 year after the date of enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 2004 and at least once every 2 years thereafter, the Advisory Committee shall report to the Director on its findings of the assessment carried out under subparagraph (B) and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

“(D) FEDERAL ADVISORY COMMITTEE ACT APPLICATION.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C. 14) shall not apply to the Advisory Committee.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “Federal Emergency Management Agency” and all that follows through “of the Agency” and inserting “National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute”;

(ii) by striking subparagraphs (B) and (C) and redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively;

(iii) by inserting after subparagraph (A) the following:

“(B) support the development of performance-based seismic engineering tools, and work with appropriate groups to promote the commercial application of such tools, through earthquake-related building codes, standards, and construction practices.”;

(iv) by striking “The principal official carrying out the responsibilities described in this paragraph shall be at a level no lower than that of Associate Director.”; and

(v) in subparagraph (D), as redesignated by clause (ii), by striking “National Science Foundation, the National Institutes of Standards and Technology” and inserting “Federal Emergency Management Agency, the National Science Foundation”;

(B) by striking so much of paragraph (2) as precedes subparagraph (B) and inserting the following:

“(2) DEPARTMENT OF HOMELAND SECURITY; FEDERAL EMERGENCY MANAGEMENT AGENCY.—

“(A) PROGRAM RESPONSIBILITIES.—The Under Secretary of Homeland Security for Emergency Preparedness and Response (the Director of the Federal Emergency Management Agency)—

“(i) shall work closely with national standards and model building code organizations, in conjunction with the National Institute of

Standards and Technology, to promote the implementation of research results;

“(ii) shall promote better building practices within the building design and construction industry including architects, engineers, contractors, builders, and inspectors;

“(iii) shall operate a program of grants and assistance to enable States to develop mitigation, preparedness, and response plans, prepare inventories and conduct seismic safety inspections of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes;

“(iv) shall support the implementation of a comprehensive earthquake education and public awareness program, including development of materials and their wide dissemination to all appropriate audiences and support public access to locality-specific information that may assist the public in preparing for, mitigating against, responding to and recovering from earthquakes and related disasters;

“(v) shall assist the National Institute of Standards and Technology, other Federal agencies, and private sector groups, in the preparation, maintenance, and wide dissemination of seismic resistant design guidance and related information on building codes, standards, and practices for new and existing buildings, structures, and lifelines, and aid in the development of performance-based design guidelines and methodologies supporting model codes for buildings, structures, and lifelines that are cost effective and affordable;

“(vi) shall develop, coordinate, and execute the National Response Plan when required following an earthquake, and support the development of specific State and local plans for each high risk area to ensure the availability of adequate emergency medical resources, search and rescue personnel and equipment, and emergency broadcast capability;

“(vii) shall develop approaches to combine measures for earthquake hazards reduction with measures for reduction of other natural and technological hazards including performance-based design approaches;

“(viii) shall provide preparedness, response, and mitigation recommendations to communities after an earthquake prediction has been made under paragraph (3)(D); and

“(ix) may enter into cooperative agreements or contracts with States and local jurisdictions and other Federal agencies to establish demonstration projects on earthquake hazard mitigation, to link earthquake research and mitigation efforts with emergency management programs, or to prepare educational materials for national distribution.”;

(C) in paragraph (3)—

(i) by inserting “and other activities” after “shall conduct research”;

(ii) in subparagraph (C), by striking “the Agency” and inserting “the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology”;

(iii) in subparagraph (D), by striking “the Director of the Agency” and inserting “the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology”;

(iv) in subparagraph (E), by striking “establish, using existing facilities, a Center for the International Exchange of Earthquake Information” and inserting “operate, using the National Earthquake Information Center, a forum for the international exchange of earthquake information”;

(v) in subparagraph (F), by striking “Network” and inserting “System”; and

(vi) by inserting after subparagraph (H) the following new subparagraphs:

“(I) work with other Program agencies to coordinate Program activities with similar earthquake hazards reduction efforts in other countries, to ensure that the Program benefits from relevant information and advances in those countries; and

“(J) maintain suitable seismic hazard maps in support of building codes for structures and lifelines, including additional maps needed for performance-based design approaches.”;

(D) in paragraph (4)—

(i) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (H), respectively;

(ii) by inserting after subparagraph (C) the following:

“(D) support research that improves the safety and performance of buildings, structures, and lifeline systems using large-scale experimental and computational facilities of the George E. Brown Jr. Network for Earthquake Engineering Simulation and other institutions engaged in research and the implementation of the National Earthquake Hazards Reduction Program”;

(iii) in subparagraph (F) (as so redesignated), by striking “; and” and inserting a semicolon; and

(iv) by inserting after subparagraph (F) (as so redesignated) the following:

“(G) include to the maximum extent practicable diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Hispanics, Native Americans, Asian-Pacific Americans, and other underrepresented populations; and”;

(E) in paragraph (5), by striking “The National” and inserting “In addition to the lead agency responsibilities described under paragraph (1), the National”; and

(F) in paragraph (5)—

(i) by striking “and” after the semicolon in subparagraph (C);

(ii) by redesignating subparagraph (D) as subparagraph (E); and

(iii) by inserting after subparagraph (C) the following:

“(D) support the development and commercial application of cost effective and affordable performance-based seismic engineering by providing technical support for seismic engineering practices and related building code, standards, and practices development; and”;

(3) in subsection (c)(1), by striking “Agency” and inserting “Interagency Coordinating Committee”.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 12 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706) is amended—

(1) by adding at the end of subsection (a) the following:

“(8) There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

“(A) \$21,000,000 for fiscal year 2005,

“(B) \$21,630,000 for fiscal year 2006,

“(C) \$22,280,000 for fiscal year 2007,

“(D) \$22,950,000 for fiscal year 2008, and

“(E) \$23,640,000 for fiscal year 2009,

of which not less than 10 percent of available program funds actually appropriated shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable design guidelines and methodologies in codes for buildings, structures, and lifelines.”;

(2) by inserting “(1)” before “There” in subsection (b);

(3) by striking “subsection” in the last sentence and inserting “paragraph”;

(4) by redesignating paragraphs (1) through (5) of subsection (b) as subparagraphs (A) through (E), respectively;

(5) by adding at the end of subsection (b) the following:

“(2) There are authorized to be appropriated to the United States Geological Survey for carrying out this title—

“(A) \$77,000,000 for fiscal year 2005, of which not less than \$30,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

“(B) \$84,410,000 for fiscal year 2006, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

“(C) \$85,860,000 for fiscal year 2007, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

“(D) \$87,360,000 for fiscal year 2008, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13; and

“(E) \$88,900,000 for fiscal year 2009, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13.”;

(6) by inserting “(1)” before “To” in subsection (c);

(7) by adding at the end of subsection (c) the following:

“(2) There are authorized to be appropriated to the National Science Foundation for carrying out this title—

“(A) \$38,000,000 for fiscal year 2005;

“(B) \$39,140,000 for fiscal year 2006;

“(C) \$40,310,000 for fiscal year 2007;

“(D) \$41,520,000 for fiscal year 2008; and

“(E) \$42,770,000 for fiscal year 2009.”;

(8) by inserting “(1)” before “To” in subsection (d); and

(9) by adding at the end of subsection (d) the following:

“(2) There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—

“(A) \$10,000,000 for fiscal year 2005,

“(B) \$11,000,000 for fiscal year 2006,

“(C) \$12,100,000 for fiscal year 2007,

“(D) \$13,310,000 for fiscal year 2008, and

“(E) \$14,640,000 for fiscal year 2009,

of which \$2,000,000 shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable codes for buildings, structures, and lifelines.”.

(b) SEPARATE AUTHORIZATION FOR THE ADVANCED NATIONAL SEISMIC RESEARCH AND MONITORING SYSTEM.—Section 13 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7707) is amended by striking subsection (c).

(c) SEPARATE AUTHORIZATION FOR THE NETWORK FOR EARTHQUAKE ENGINEERING SIMULATION.—Section 14(b) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7708(b)) is amended—

(1) by striking “and” after the semicolon in paragraph (3);

(2) by striking “2004.” in paragraph (4) and inserting “2004.”;

(3) by adding at the end the following:

“(5) \$20,000,000 for fiscal year 2005, all of which shall be available for operations and maintenance;

“(6) \$20,400,000 for fiscal year 2006, all of which shall be available for operations and maintenance;

“(7) \$20,870,000 for fiscal year 2007, all of which shall be available for operations and maintenance;

“(8) \$21,390,000 for fiscal year 2008, all of which shall be available for operations and maintenance; and

“(9) \$21,930,000 for fiscal year 2009, all of which shall be available for operations and maintenance.”.

TITLE II—WINDSTORM IMPACT REDUCTION

SEC. 201. SHORT TITLE.

This Act may be cited as the “National Windstorm Impact Reduction Act of 2004”.

SEC. 202. FINDINGS.

The Congress finds the following:

(1) Hurricanes, tropical storms, tornadoes, and thunderstorms can cause significant loss of life, injury, destruction of property, and economic and social disruption. All States and regions are vulnerable to these hazards.

(2) The United States currently sustains several billion dollars in economic damages each year due to these windstorms. In recent decades, rapid development and population growth in high-risk areas has greatly increased overall vulnerability to windstorms.

(3) Improved windstorm impact reduction measures have the potential to reduce these losses through—

(A) cost-effective and affordable design and construction methods and practices;

(B) effective mitigation programs at the local, State, and national level;

(C) improved data collection and analysis and impact prediction methodologies;

(D) engineering research on improving new structures and retrofitting existing ones to better withstand windstorms, atmospheric-related research to better understand the behavior and impact of windstorms on the built environment, and subsequent application of those research results; and

(E) public education and outreach.

(4) There is an appropriate role for the Federal Government in supporting windstorm impact reduction. An effective Federal program in windstorm impact reduction will require interagency coordination, and input from individuals, academia, the private sector, and other interested non-Federal entities.

SEC. 203. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term “Director” means the Director of the Office of Science and Technology Policy.

(2) PROGRAM.—The term “Program” means the National Windstorm Impact Reduction Program established by section 204(a).

(3) STATE.—The term “State” means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(4) WINDSTORM.—The term “windstorm” means any storm with a damaging or destructive wind component, such as a hurricane, tropical storm, tornado, or thunderstorm.

SEC. 204. NATIONAL WINDSTORM IMPACT REDUCTION PROGRAM.

(a) ESTABLISHMENT.—There is established the National Windstorm Impact Reduction Program.

(b) OBJECTIVE.—The objective of the Program is the achievement of major measurable reductions in losses of life and property from windstorms. The objective is to be achieved through a coordinated Federal effort, in cooperation with other levels of government, academia, and the private sector, aimed at improving the understanding of windstorms and their impacts and developing and encouraging implementation of cost-effective mitigation measures to reduce those impacts.

(c) INTERAGENCY WORKING GROUP.—Not later than 90 days after the date of enactment of this Act, the Director shall establish an Interagency Working Group consisting of representatives of the National Science Foundation, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the Federal Emergency Management Agency, and other Federal agencies as appropriate. The Director shall designate an agency to serve as Chair of the Working Group and be responsible for the planning, management, and coordination of the Program, including budget coordination. Specific agency roles and responsibilities under the Program shall be defined in the implementation plan required under subsection (e). General agency responsibilities shall include the following:

(1) The National Institute of Standards and Technology shall support research and development to improve building codes and standards and practices for design and construction of buildings, structures, and lifelines.

(2) The National Science Foundation shall support research in engineering and the atmospheric sciences to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(3) The National Oceanic and Atmospheric Administration shall support atmospheric sciences research to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(4) The Federal Emergency Management Agency shall support the development of risk assessment tools and effective mitigation techniques, windstorm-related data collection and analysis, public outreach, information dissemination, and implementation of mitigation measures consistent with the Agency’s all-hazards approach.

(d) PROGRAM COMPONENTS.—

(1) IN GENERAL.—The Program shall consist of three primary mitigation components: improved understanding of windstorms, windstorm impact assessment, and windstorm impact reduction. The components shall be implemented through activities such as data collection and analysis, risk assessment, outreach, technology transfer, and research and development. To the extent practicable, research activities authorized under this title shall be peer-reviewed, and the components shall be designed to be complementary to, and avoid duplication of, other public and private hazard reduction efforts.

(2) UNDERSTANDING OF WINDSTORMS.—Activities to enhance the understanding of windstorms shall include research to improve knowledge of and data collection on the impact of severe wind on buildings, structures, and infrastructure.

(3) WINDSTORM IMPACT ASSESSMENT.—Activities to improve windstorm impact assessment shall include—

(A) development of mechanisms for collecting and inventorying information on the performance of buildings, structures, and infrastructure in windstorms and improved collection of pertinent information from sources, including the design and construction industry, insurance companies, and building officials;

(B) research, development, and technology transfer to improve loss estimation and risk assessment systems; and

(C) research, development, and technology transfer to improve simulation and computational modeling of windstorm impacts.

(4) WINDSTORM IMPACT REDUCTION.—Activities to reduce windstorm impacts shall include—

(A) development of improved outreach and implementation mechanisms to translate existing information and research findings into

cost-effective and affordable practices for design and construction professionals, and State and local officials;

(B) development of cost-effective and affordable windstorm-resistant systems, structures, and materials for use in new construction and retrofit of existing construction; and

(C) outreach and information dissemination related to cost-effective and affordable construction techniques, loss estimation and risk assessment methodologies, and other pertinent information regarding windstorm phenomena to Federal, State, and local officials, the construction industry, and the general public.

(e) **IMPLEMENTATION PLAN.**—Not later than 1 year after date of enactment of this title, the Interagency Working Group shall develop and transmit to the Congress an implementation plan for achieving the objectives of the Program. The plan shall include—

(1) an assessment of past and current public and private efforts to reduce windstorm impacts, including a comprehensive review and analysis of windstorm mitigation activities supported by the Federal Government;

(2) a description of plans for technology transfer and coordination with natural hazard mitigation activities supported by the Federal Government;

(3) a statement of strategic goals and priorities for each Program component area;

(4) a description of how the Program will achieve such goals, including detailed responsibilities for each agency; and

(5) a description of plans for cooperation and coordination with interested public and private sector entities in each program component area.

(f) **BIENNIAL REPORT.**—The Interagency Working Group shall, on a biennial basis, and not later than 180 days after the end of the preceding 2 fiscal years, transmit a report to the Congress describing the status of the windstorm impact reduction program, including progress achieved during the preceding two fiscal years. Each such report shall include any recommendations for legislative and other action the Interagency Working Group considers necessary and appropriate. In developing the biennial report, the Interagency Working Group shall consider the recommendations of the Advisory Committee established under section 205.

SEC. 205. NATIONAL ADVISORY COMMITTEE ON WINDSTORM IMPACT REDUCTION.

(a) **ESTABLISHMENT.**—The Director shall establish a National Advisory Committee on Windstorm Impact Reduction, consisting of not less than 11 and not more than 15 non-Federal members representing a broad cross section of interests such as the research, technology transfer, design and construction, and financial communities; materials and systems suppliers; State, county, and local governments; the insurance industry; and other representatives as designated by the Director.

(b) **ASSESSMENT.**—The Advisory Committee shall assess—

(1) trends and developments in the science and engineering of windstorm impact reduction;

(2) the effectiveness of the Program in carrying out the activities under section 204(d);

(3) the need to revise the Program; and

(4) the management, coordination, implementation, and activities of the Program.

(c) **BIENNIAL REPORT.**—At least once every two years, the Advisory Committee shall report to Congress and the Interagency Working Group on the assessment carried out under subsection (b).

(d) **SUNSET EXEMPTION.**—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee established under this section.

SEC. 206. SAVINGS CLAUSE.

Nothing in this title supersedes any provision of the National Manufactured Housing Construction and Safety Standards Act of 1974. No design, construction method, practice, technology, material, mitigation methodology, or hazard reduction measure of any kind developed under this title shall be required for a home certified under section 616 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5415), pursuant to standards issued under such Act, without being subject to the consensus development process and rule-making procedures of that Act.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

(a) **FEDERAL EMERGENCY MANAGEMENT AGENCY.**—There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

(1) \$8,700,000 for fiscal year 2006;

(2) \$9,400,000 for fiscal year 2007; and

(3) \$9,400,000 for fiscal year 2008.

(b) **NATIONAL SCIENCE FOUNDATION.**—There are authorized to be appropriated to the National Science Foundation for carrying out this title—

(1) \$8,700,000 for fiscal year 2006;

(2) \$9,400,000 for fiscal year 2007; and

(3) \$9,400,000 for fiscal year 2008.

(c) **NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.**—There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—

(1) \$3,000,000 for fiscal year 2006;

(2) \$4,000,000 for fiscal year 2007; and

(3) \$4,000,000 for fiscal year 2008.

(d) **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.**—There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for carrying out this title—

(1) \$2,100,000 for fiscal year 2006;

(2) \$2,200,000 for fiscal year 2007; and

(3) \$2,200,000 for fiscal year 2008.

SEC. 208. BIENNIAL REPORT.

Section 37(a) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885d(a)) is amended by striking “By January 30, 1982, and biennially thereafter” and inserting “By January 30 of each odd-numbered year”.

SEC. 209. COORDINATION.

The Secretary of Commerce, the Director of the National Institute of Standards and Technology, the Director of the Office of Science and Technology Policy and the heads of other Federal departments and agencies carrying out activities under this title and the statutes amended by this title shall work together to ensure that research, technologies, and response techniques are shared among the programs authorized in this title in order to coordinate the Nation's efforts to reduce vulnerability to the hazards described in this title.

TITLE III—COMMERCIAL SPACE TRANSPORTATION

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 70119 of title 49, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) \$11,941,000 for fiscal year 2005;

“(2) \$12,299,000 for fiscal year 2006;

“(3) \$12,668,000 for fiscal year 2007;

“(4) \$13,048,000 for fiscal year 2008; and

“(5) \$13,440,000 for fiscal year 2009.”

SA 3984. Mr. BAYH (for himself, Mr. ROBERTS, Mr. WYDEN, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res.

445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Section 201 is amended by adding at the end the following:

(i) **REFERRAL.**—Section 3 of S. Res. 400 is amended by—

(1) striking subsection (b); and

(2) redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

SA 3985. Mr. CHAMBLISS (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of section 101(b)(1) insert the following:

“and except matters relating to the U.S. Citizenship and Immigration Service, the U.S. Customs and Border Protection, and the U.S. Immigration and Customs Enforcement, other than predominantly and substantially anti-terrorism matters; and except matters relating to the immigration functions of the Directorate of Border and Transportation Security.”

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Ms. COLLINS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on October 6, 2004, at 10 a.m., in open session to consider the following nominations: Francis J. Harvey to be Secretary of the Army; Richard Greco, Jr., to be Assistant Secretary of the Navy for Financial Management; and General Gregory S. Martin, USAF, for reappointment to the grade of General and to be Commander, United States Pacific Command.

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

COMMITTEE ON ARMED SERVICES

Ms. COLLINS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on October 6, 2004, at 2:30 p.m., in open session to receive testimony on the report of the Special Advisor to the Director of Central Intelligence for strategy regarding Iraqi weapons of mass destruction programs.

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

COMMITTEE ON FOREIGN RELATIONS

Ms. COLLINS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 6, 2004 at 9:30 a.m. to hold a hearing on Addressing the New Reality of Current Visa Policy on International Student Researchers.