

S. Con. Res. 146. A concurrent resolution to direct the Secretary of the Senate to make corrections in the enrollment of the bill S. 150; considered and agreed to.

ADDITIONAL COSPONSORS

S. 469

At the request of Mr. KOHL, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 469, a bill to amend chapter 44 of title 18, United States Code, to require ballistics testing of all firearms manufactured and all firearms in custody of Federal agencies.

S. 540

At the request of Mr. INHOFE, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from Kentucky (Mr. BUNNING) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 540, a bill to authorize the presentation of gold medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th Century in recognition of the service of those Native Americans to the United States.

S. 1557

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

S. 2744

At the request of Mr. SUNUNU, the names of the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. GRASSLEY) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2744, a bill to authorize the minting and issuance of a Presidential \$1 coin series.

S. 2956

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 2956, a bill to amend title 10, United States Code, to direct the Secretary of Defense to carry out a program to provide a support system for members of the Armed Forces who incur severe disabilities.

S. 2968

At the request of Mr. REED, the names of the Senator from Ohio (Mr. DEWINE), the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 2968, a bill to amend the Public Health Service Act to address the shortage of influenza vaccine, and for other purposes.

S. 2987

At the request of Mr. BURNS, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2987, a bill to amend the Agricultural Marketing Act of 1946 to expand the country of origin labeling for certain covered commodities, and for other purposes.

S. RES. 436

At the request of Mr. REID, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from North Dakota (Mr. DORGAN), the Senator from Idaho (Mr. CRAPO) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. Res. 436, a resolution designating the second Sunday in the month of December 2004 as "National Children's Memorial Day".

S. RES. 452

At the request of Mr. CAMPBELL, the names of the Senator from Utah (Mr. HATCH), the Senator from Ohio (Mr. DEWINE) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. Res. 452, a resolution designating December 13, 2004, as "National Day of the Horse" and encouraging the people of the United States to be mindful of the contribution of horses to the economy, history, and character of the United States.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN:

S. 2988. A bill to amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to information concerning the quality of care provided by skilled nursing facilities and to provide incentives to skilled nursing facilities to improve the quality of care provided by those facilities by linking the amount of payment under the medicare program to quality reporting and performance requirements, and for other purposes; to the Committee on Finance.

Mr. WYDEN. Mr. President, I rise to discuss a bill I am introducing today, the Long Term Care Quality and Consumer Information Act.

I hope that this bill will spark a serious debate about how we pay for quality care. This proposal establishes a voluntary system under which nursing homes providing better quality of care would receive higher payment and in turn would provide more information about the quality of care provided. Information would include nurse staffing ratios and would be made public to consumers and their families.

Historically, Americans have been paying the same for quality health care as for mediocre care. Efforts have been made by some in the private sector to better recognize and incentivize those providers who consistently provide higher level of care. The Institute of Medicine (IOM), in its report "Leading by Example," declared the government should take the lead in improving health care by giving financial rewards to hospitals and doctors who improve care for beneficiaries in six Federal programs, including Medicare and Medicaid and the Veterans Health Administration. The IOM report also said the government should collect and make available to the public data comparing the quality of care among providers. The Centers for Medicare and Medicaid Services has begun pilot programs. I

think nursing homes should also be an area in which we explore payment policies that regard those providing a higher quality of care.

I look forward to continuing the discussion with all stakeholders about these concepts so we can assure a high level of care and find ways to help providers improve the level of care they provide.

By Mr. DURBIN (for himself, Mr. LEAHY, and Mr. JEFFORDS):

S. 2989. A bill to amend the Controlled Substances Act to provide an affirmative defense for the medical use of marijuana in accordance with the laws of the various States, and for other purposes; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today with Senators LEAHY and JEFFORDS to introduce the Truth in Trials Act. This is a narrowly tailored bill that would allow defendants in Federal criminal trials regarding medicinal marijuana to introduce evidence that their marijuana-related activity was performed in compliance with State law regarding the medical use of marijuana. It also would provide defendants in such trials with an affirmative defense if they establish, by a preponderance of the evidence, that their activities complied with State law.

Let me be clear. This legislation does not legalize marijuana. It does not even legalize marijuana for medicinal purposes. It only is meant to address the conflict between State and Federal law with regard to medical marijuana. Under this legislation, defendants in the ten States with medicinal marijuana laws could be found not guilty of violating Federal law if their actions are done in compliance with State law.

Why is this legislation necessary?

Over the past 8 years, ten States have passed referendums or enacted laws authorizing medical marijuana in those States. The first of these states was California. In 1996, voters in California passed the California Compassionate Use Act, also known as Proposition 215, to allow seriously ill people who have a doctor's recommendation to cultivate and use marijuana as a form of treatment.

However, in 2001, the Drug Enforcement Administration began aggressively targeting medical marijuana providers in California and these other States—regardless of the fact that these individuals were complying with State law.

Consider who these so-called criminals are that the DEA is targeting and arresting.

The city of Oakland enacted a medicinal marijuana ordinance, as permitted by California law, and Ed Rosenthal grew marijuana to be sold for medicinal uses under the auspices of this ordinance. Even though Mr. Rosenthal was acting as an officer of the city, in February 2002, DEA agents raided his facility and arrested him of marijuana cultivation and conspiracy.

Since Federal law does not recognize "medical necessity" as a defense, Mr. Rosenthal was not allowed to tell the jury that he was growing the marijuana for medicinal purposes. The prosecutors took this opportunity to present Mr. Rosenthal as a big-time drug dealer, and the jury had no choice but to convict Mr. Rosenthal.

After the trial, the jurors learned that Mr. Rosenthal was growing medical marijuana and complained that they had been misled by the court. Five jurors immediately issued a public apology to him and demanded a new trial. Their statement said, "In this trial, the prosecution was allowed to put all of the evidence and testimony on one of the scales, while the defense was not allowed to put its evidence and testimony on the other side. Therefore we were not allowed as a jury to properly weight the case."

During the sentencing phase of the trial, nine of the twelve jurors asked that Mr. Rosenthal not be imprisoned because they had convicted him "without having all the evidence." Due to these unique circumstances, the judge sentenced Mr. Rosenthal to one day in prison and a \$1,000 fine, the most lenient sentence allowed under the law. Yet, the prosecutor, who had asked for a six-and-a-half-year sentence, has appealed this sentence.

Another example is the Wo/men's Alliance for Medical Marijuana, a non-profit collective of patients and their caregivers, 85 percent of whom are terminally ill with cancer or AIDS. One member of this organization is Suzanne Pfeil, who suffers from post-polio syndrome and experiences extreme pain and muscle spasticity. She is allergic to opiates and does not tolerate many pharmaceutical drugs, so her physician recommended medicinal marijuana, in accordance with California State law. Here, in her own words, is what happened to her in 2002:

At dawn on September 5th, 2002, I awoke to five federal agents pointing assault rifles at my head, I did not hear them come in because my respirator is rather loud. They yelled at me to put my hands in the air and to stand up "NOW." I tried to explain to them that I needed to put my hands down on the bed in order to sit up because I am paralyzed. They again shouted at me to stand up. I pointed to my crutches and braces beside the bed and said, "I'm sorry, I can't stand up without my crutches and braces and I normally use a wheelchair." At that point they ripped the covers off the bed and finally realized what I was trying to explain amid their shouts and guns. They handcuffed me behind my back and left me on the bed. The DEA then proceeded to confiscate medication recommended to me by my physician under California State Law Proposition 215. My crime? I am a member of the WAMM, the Wo/men's Alliance for Medical Marijuana, a non-profit collective of patients and their caregivers working together to provide free medication and hospice services to approximately 250 seriously ill and dying members. The DEA then destroyed our collective garden and arrested our Director Valerie Corral, who is an epileptic, and her caregiver and husband Michael Corral.

This conflict between State and Federal law is a serious one, and one that

will be addressed by the Supreme Court later this year in the case of *Ashcroft v. Raich*. Last year, the Ninth Circuit Court of Appeals rule in this case that is unconstitutional to prosecute medicinal marijuana users under federal law in states with medicinal marijuana laws, as long as the marijuana is not sold or transported across state lines.

The Truth in Trials Act is consistent with this Circuit Court ruling, which I hope the Supreme Court will uphold, and I urge my colleagues to support this bill.

By Mr. BAUCUS (for himself and Mr. CRAIG):

S. 2992. A bill to liquidate and distribute duties collected on certain softwood lumber from Canada; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today in disappointment, but also with resolve.

After more than 2 years of negotiations between the United States and Canada, there is still no agreement on how to manage softwood lumber trade between our two countries. This is disappointing, particularly given the importance of the issue. Perhaps what is most disappointing, though, is that the negotiations appear to have fallen off, despite the fact that parties last year seemed close to an agreement.

There might be some who think that the recent NAFTA decisions signal an imminent conclusion of the litigation, and that deposits collected by U.S. Customs will be returned soon. As one who has seen this dispute wax and wane for nearly 30 years, this seems to me a naïve expectation. The fact is that the recent NAFTA decisions had more to do with a bitter disagreement between the NAFTA panelists and the U.S. International Trade Commission about investigative methodologies than whether or not the Canadian timber policies are consistent with NAFTA obligations. The bottom line—and this is the issue at the root of this dispute—is that the Canadian policies are deeply inconsistent with the notion of a free and integrated North American market. The timber subsidies provide Canadian mills with a significant, artificial advantage. Until this basic issue is resolved, this dispute—including this litigation and the duties imposed on importers—will continue.

In my judgment, the most effective, durable, and fair resolution to this decades-old problem will be found only through a negotiated settlement. This means both parties sitting down at the table and finding a mutually acceptable solution that provides for timber policies that are consistent and compatible. However, pulling away from the negotiating table and relying on litigation isn't going to get us there.

Under current U.S. law, the deposits sitting in escrow are eligible for liquidation. As I have said, I would prefer a negotiated settlement—one that resolves all matters of disagreement, including the disposition of these depos-

its, but some involved in the negotiation appear to have decided upon litigation as their preferred method of resolution. If it is necessary for more and my colleagues to assert the legal rights available to the U.S. industry as a way of reminding the parties of the stakes that are still very much on the table, then that is what we will do.

Today, my good friend, LARRY CRAIG and I have introduced a bill that would order the Commerce Department to begin the process of liquidating the approximately \$3 billion sitting in escrow, as a result of the antidumping and countervailing duties imposed upon imports of Canadian softwood lumber since March 2002. Further, these deposits are to be distributed to the U.S. lumber industry, which have been seriously injured by Canada's timber policies and which petitioned for these duties in the first place. This measure is consistent with current U.S. law and, if enacted, I expect the U.S. government to defend it to the hilt.

I hope that our action today will spark a return—by both sides—to the negotiating table. However, if it does not, and if a settlement is not reached, I will not hesitate to push forcefully for enactment of this legislation.

Mr. CRAIG. Mr. President, I rise today with a heavy heart because it has been more than four years since the expiration of the Canadian Softwood Lumber Agreement and we have very little to show for it except a U.S. industry that is still a victim of the situation.

This is an issue that I have been involved with since I came to Congress and in that time we have seen three separate disputes resulting in two negotiated agreements that have also come and gone. We are now in the middle of our fourth dispute with no settlement agreement in sight.

While the two countries were close to reaching an agreement last year, little has happened since to reach a resolution. Meanwhile, with each log truck that comes across the border from Canada, another light at a U.S. timber company goes out permanently.

In order to ensure a future for U.S. timber companies, I am joining Senator BAUCUS, in introducing the Softwood Lumber Duties Liquidation Act.

Under current U.S. law, the deposits sitting in escrow are eligible for liquidation. The duties were first imposed in May 2002, when the U.S. slapped antidumping and countervailing tariffs amounting to more than 27 percent on Canada imports. The Commerce Department had determined that Canadian timber policies amounted to an unfair subsidy and led to the dumping of artificially cheap softwood lumber into the U.S. market. Meanwhile, the U.S. International Trade Commission ruled that the subsidies and dumped imports injured the U.S. lumber industry, warranting the imposition of tariffs.

That being said, it is time that all parties come together in honest faith and work towards establishing a settlement that is free and fair in its framework. Anything less would be unjust to producers and consumers on both sides of the border.

I am hopeful for a resolution. However, in the meantime, I, along with Senator BAUCUS, will continue to uphold U.S. laws and the determinations of our trade agencies to help ensure fair trade and protect our industries from illegally subsidized products.

By Mr. GRAHAM of Florida (for himself and Mr. VOINOVICH):

S. 2993. A bill to establish a National Commission on the Infrastructure of the United States; to the Committee on Environment and Public Works.

Mr. GRAHAM of Florida. Mr. President, I rise to introduce the National Infrastructure Improvement Act of 2004. For the past year, both bodies of Congress and the Administration have been in a numbers debate—disagreeing over the appropriate level of Federal expenditures for surface transportation, highways and public transit, for the next six years.

What this dispute misses are the real issues: 1. What is the state of our surface transportation systems and other public infrastructure? 2. What will the expenditure levels in the bills under consideration do to affect that state? 3. What do the American people want in terms of maintenance, access, congestion, and serviceability of our highways, bridges, public transit, schools, water and sewer systems, and other infrastructure sectors?

Now, we have passed an 8 month surface transportation extension because the White House and both bodies of Congress could not even agree on a \$318 billion funding level—\$57 billion lower than what was recommended by the United States Department of Transportation to maintain our surface transportation. These inadequate levels of funding that were being discussed proves that surface transportation and infrastructure is not a priority of this Congress. This is the precise reason we must establish an infrastructure commission to assess the problems of our nation's infrastructure and recommend solutions. This Congress must understand that a component of America's economic competitiveness lies within our infrastructure.

The reality is that our Nation is in the midst of an infrastructure crisis. In almost every one of these areas, America is losing ground at an alarming pace and inadequate funding on the part of the federal government is the leading cause.

The infrastructure deficit interferes with our personal lives on a daily basis. Increased congestion means longer commutes to and from work. Unrepaired potholes means greater wear and tear on our vehicles. Deteriorating water lines means greater exposure to lead in our drinking water.

Crumbling schools means our children do not receive the quality education they deserve. We cannot expect our children to be productive if their schools' basic amenities do not meet the fundamental standards needed for effective learning. A 2003 report by the American Society of Civil Engineers, who I am happy to say support this piece of legislation, in addition to the Associated General Contractors of America and the American Public Works Association, had schools rated as a D- and estimated that 75% of school buildings are inadequate to meet the needs of school children.

An even greater threat is over the horizon. This infrastructure deficit will erode our economic productivity advantage, the principle hope for Americans to maintain our standard of living in the face of fierce global competition. U.S. productivity, and the high standard of living that results, is dependent upon efficient transportation systems and healthy workers.

We are not efficient if our goods are shipped on trucks that are stuck in congested traffic. We are not efficient if our harbors are unable to accommodate the newest generation of freighters. And our workers cannot be productive if our sewer and water lines are in such disrepair that it affects their health.

In 1984, Congress established the National Council on Public Works Improvement to report on the state of the Nation's infrastructure. They found that investment in America's infrastructure was barely keeping up with yearly depreciation and that the system would not be able to adequately respond to increased demand. Their 1988 final report warned that without increased investment, America would be faced with an "infrastructure crisis."

Sixteen years later and after the major economic boom of the 1990's, we have failed to maintain, let alone improve, America's infrastructure. The consequences of our inaction are apparent. In the 1988 report, the national infrastructure grade was a "C." The ASCE 2003 Report Card for America's Infrastructure demoted the overall grade to a "D+." It is evident that there has been a deterioration in several aspects of our infrastructure since the 1988 report.

In 1988, roads received a grade of a C+. In 2003, roads were downgraded to a D+.

In 1988, water resources and water supply was given a B and B- respectively. In 2003, drinking water received a D and navigable waterways received a D+.

This deterioration has a ripple effect throughout the entire economy. Public dollars invested in infrastructure increases the productivity of private investment, which keeps the U.S. competitive in the global economy.

What should we do? In the short run, any infrastructure bill passed prior to the development of a long-term plan

should be for 3 years or less in duration. This is the only way to keep the political heat on the White House and the Congress. Our recent experience with 6-year authorization bills, such as the highway bill, demonstrates the Jekyll and Hyde approach we have taken toward infrastructure. There is a moderate peak of attention when the legislation is up for reauthorization, then, more than a half a decade of disinterest.

Also in the short run, Congress must restrain itself from using the surface transportation act and other infrastructure legislation as a field of turkeys with the gobblers to be brought home to voters. The ability of Congress to restrain itself would be enormously enhanced if the relevant federal agencies would immediately get to the task of developing nation-wide standards of need, so that the Congress would have a standard against which to allocate resources. Like the United States Department of Transportation, other agencies need to assess their needs and report back to the Congress and the White House one year prior to the expiration of the current laws.

In the long run, we must come to grips with this burgeoning infrastructure deficit. One model could be the National Highway Act of the 1950s, when under the leadership of President Eisenhower, the states and the federal government came together to jointly finance and construct an interstate highway system, a system which has transformed our nation. President Eisenhower recognized that the highway system would benefit the entire nation, and called on Congress to support his vision. In his words, "... the uniting forces of our communication and transportation systems are dynamic elements in the very name we bear—United States." Today, his words still resonate. Improving infrastructure should be a cause around which we can all unite. If we act, the entire country benefits; if we fail to act, the entire country suffers.

This new infrastructure initiative could use many of Eisenhower's same principles and apply them to rebuild America and protect and advance our nation's social and economic future. The establishment of this national commission on infrastructure to report to the President and the Congress in 2½ years would be a step in the right direction.

I urge my colleagues to support this vital legislation to ensure that the nation's infrastructure will one day meet current and future demands and more importantly, facilitate economic growth.

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

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

S. 2993

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Infrastructure Improvement Act of 2004”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **ACQUISITION.**—The term “acquisition” includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation.

(2) **COMMISSION.**—The term “Commission” means the National Commission on the Infrastructure of the United States established by section 3(a).

(3) **CONSTRUCTION.**—The term “construction” means—

(A) the design, planning, and erection of new infrastructure;

(B) the expansion of existing infrastructure;

(C) the reconstruction of an infrastructure project at an existing site; and

(D) the installation of initial or replacement infrastructure equipment.

(4) **INFRASTRUCTURE.**—

(A) **IN GENERAL.**—The term “infrastructure” means a nonmilitary structure or facility and equipment associated with that structure or facility.

(B) **INCLUSIONS.**—The term “infrastructure” includes—

(i) a surface transportation facility (such as a road, bridge, highway, public transportation facility, and freight and passenger rail);

(ii) a mass transit facility;

(iii) an airport or airway facility;

(iv) a resource recovery facility;

(v) a water supply and distribution system;

(vi) a wastewater collection, treatment, and related facility;

(vii) a waterway;

(viii) a dock or port;

(ix) a school building; and

(x) a solid waste disposal facility.

(5) **MAINTENANCE.**—The term “maintenance” means any regularly scheduled activity, such as a routine repair, intended to ensure that infrastructure continues to operate efficiently.

(6) **REHABILITATION.**—The term “rehabilitation” means—

(A) the correction of a deficiency in existing infrastructure so as to extend the useful life or improve the effectiveness of the infrastructure;

(B) the modernization or replacement of equipment of existing infrastructure; and

(C) the modernization of, or replacement of parts for, rolling stock relating to infrastructure.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) **ESTABLISHMENT.**—There is established a commission to be known as the “National Commission on the Infrastructure of the United States” to ensure that the infrastructure of the United States—

(1) meets current and future demand; and

(2) facilitates economic growth.

(b) **MEMBERSHIP.**—

(1) **COMPOSITION.**—The Commission shall be composed of 7 members, of whom—

(A) 3 members shall be appointed by the President;

(B) 1 member shall be appointed by the Speaker of the House of Representatives;

(C) 1 member shall be appointed by the minority leader of the House of Representatives;

(D) 1 member shall be appointed by the majority leader of the Senate; and

(E) 1 member shall be appointed by the minority leader of the Senate.

(2) **QUALIFICATIONS.**—Each member of the Commission shall have experience in 1 or more of the fields of economics, public administration, civil engineering, public

works, and related design professions, planning, or public investment financing.

(3) **DATE OF APPOINTMENTS.**—The members of the Commission shall be appointed under paragraph (1) not later than 90 days after the enactment of this Act.

(c) **TERM; VACANCIES.**—

(1) **TERM.**—A member shall be appointed for the life of the Commission.

(2) **VACANCIES.**—A vacancy in the Commission—

(A) shall not affect the powers of the Commission; and

(B) shall be filled, not later than 30 days after the date on which the vacancy occurs, in the same manner as the original appointment was made.

(d) **INITIAL MEETING.**—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(e) **MEETINGS.**—The Commission shall meet at the call of the Chairperson or the majority of the Commission members.

(f) **QUORUM.**—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) **CHAIRPERSON AND VICE CHAIRPERSON.**—The Commission shall select a Chairperson and Vice Chairperson from among the members of the Commission.

SEC. 4. DUTIES.

(a) **STUDY.**—

(1) **IN GENERAL.**—Not later than February 15, 2007, the Commission shall complete a study of all matters relating to the state of the infrastructure of the United States.

(2) **MATTERS TO BE STUDIED.**—In carrying out paragraph (1), the Commission shall study such matters as—

(A) the capacity of infrastructure improvements to sustain current and anticipated economic development, including long-term economic construction and to support a sustained and expanding economy;

(B) the age and condition of public infrastructure (including congestion and changes in the condition of that infrastructure as compared with preceding years);

(C) the methods used to finance the construction, acquisition, rehabilitation, and maintenance of public works improvements (including general obligation bonds, tax-credit bonds, revenue bonds, user fees, excise taxes, direct governmental assistance, and private investment);

(D) any trends or innovations in methods used to finance that construction, acquisition, rehabilitation, and maintenance;

(E) investment requirements, by type of facility, that are necessary to maintain the current condition and performance of those facilities and the investment needed to improve those facilities in the future;

(F)(i) the projected historical share of Federal, State, local, and other government levels of investment requirements as identified in subparagraph (E); and

(ii) the projected expenditure on infrastructure facility improvements described in subparagraph (E) by each level of government;

(G) estimates of the return to the economy from public works investment;

(H) any trends or innovations in infrastructure procurement methods; and

(I) any trends or innovations in construction methods or materials.

(3) **CONSULTATION.**—In carrying out paragraph (1), the Commission shall consult with appropriate stakeholders, including—

(A) the Secretary of the Army;

(B) the Secretary of Agriculture;

(C) the Secretary of Transportation;

(D) the Administrator of the Environmental Protection Agency;

(E) the Secretary of Commerce;

(F) the Secretary of Education;

(G) the Secretary of Energy;

(H) the Secretary of the Treasury;

(I) the Secretary of the Interior;

(J) the Administrator of General Services;

(K) associations representing private sector stakeholders;

(L) associations representing State and local governments; and

(M) such other individuals and entities as are determined to be appropriate by the Commission.

(4) **RESOURCES; DATA.**—In carrying out paragraph (1), to the maximum extent practicable, the Commission shall—

(A) use existing studies, data, sampling techniques, and reports of other commissions; and

(B) if collecting new data under this section, make every effort to ensure that the data is collected in consultation with the States so as to ensure that uniform methods, categories, and analyses are used.

(b) **RECOMMENDATIONS.**—The Commission shall develop recommendations—

(1) on a Federal infrastructure plan that will detail national infrastructure program priorities, including alternative methods of meeting national infrastructure needs to effectuate balanced growth and economic development;

(2) on public works improvements and methods of delivering and providing for public work facilities;

(3) for analysis or criteria and procedures that may be used by Federal agencies and State and local governments in—

(A) inventorying existing and needed public works improvements;

(B) assessing the condition of public works improvements; and

(C) developing uniform criteria and procedures for use in conducting those inventories and assessments; and

(4) for proposed guidelines for the uniform reporting, by Federal agencies, of construction, acquisition, rehabilitation, and maintenance data with respect to infrastructure improvements.

(c) **STATEMENT AND RECOMMENDATIONS.**—Not later than February 15, 2007, the Commission shall submit to Congress—

(1) a detailed statement of the findings and conclusions of the Commission; and

(2) the recommendations of the Commission under subsection (b), including recommendations for such legislation and administrative actions for 5-, 15-, 30-, and 50-year time periods as the Commission considers to be appropriate.

SEC. 5. POWERS OF THE COMMISSION.

(a) **HEARINGS.**—The Commission shall hold such hearings, meet and act at such times and places, take such testimony, administer such oaths, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) **INFORMATION FROM FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this Act.

(2) **PROVISION OF INFORMATION.**—On request of the Chairperson of the Commission, the head of the Federal agency shall provide the information to the Commission.

(c) **GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services or property.

(d) **CONTRACTS.**—The Commission may enter into contracts with other entities, including contracts under which 1 or more entities, with the guidance of the Commission, conduct the study required under section 4(a).

(e) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

SEC. 6. COMMISSION PERSONNEL MATTERS.

(a) **COMPENSATION OF MEMBERS.**—A member of the Commission shall serve without pay, but shall be allowed a per diem allowance for travel expenses, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(b) **STAFF.**—

(1) **IN GENERAL.**—The Chairperson of the Commission may, without regard to the civil service laws, including regulations, appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(2) **CONFIRMATION OF EXECUTIVE DIRECTOR.**—The employment of an executive director shall be subject to confirmation by a majority of the members of the Commission.

(3) **COMPENSATION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) **MAXIMUM RATE OF PAY.**—In no event shall any employee of the Commission (other than the executive director) receive as compensation an amount in excess of the maximum rate of pay for Executive Level IV under section 5315 of title 5, United States Code.

(c) **DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.**—

(1) **IN GENERAL.**—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(2) **CIVIL SERVICE STATUS.**—The detail of a Federal employee shall be without interruption or loss of civil service status or privilege.

(d) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**—On request of the Commission, the Secretary of the Army, acting through the Chief of Engineers, shall provide, on a reimbursable basis, such office space, supplies, equipment, and other support services to the Commission and staff of the Commission as are necessary for the Commission to carry out the duties of the Commission under this Act.

SEC. 7. CONGRESSIONAL BUDGET OFFICE REVIEW.

Not later than 90 days after the date on which the report under section 4(c) is submitted to Congress by the Commission, the Congressional Budget Office shall review the report and submit a report on the results of the review to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 8. FUNDING.

(a) **FISCAL YEAR 2005.**—For fiscal year 2005, from amounts otherwise made available to the Secretary of the Army for the purpose of civil works for that fiscal year, the Secretary of the Army shall transfer to the Commission such amount, not to exceed \$2,000,000, as the Commission may request to carry out this Act.

(b) **FUTURE FISCAL YEARS.**—There is authorized to be appropriated to the Commission to carry out this Act \$1,000,000 for each of fiscal years 2006 and 2007.

SEC. 9. TERMINATION OF COMMISSION.

The Commission shall terminate on September 30, 2007.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. STEVENS, Mr. BURNS, and Mr. DORGAN):

S. 2994. A bill to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today with the support of many of my colleagues on the Committee on Commerce, Science, and Transportation to introduce legislation to help keep Americans' telephone bills from rising and to prevent future disruption to the Universal Service Fund. The Universal Service Fund helps keep telephone rates at a reasonable level for millions of American consumers and businesses located in rural parts of our country, areas where phone service would otherwise be prohibitively expensive. The USF also provides discounts to schools and libraries on their Internet service through the E-Rate program, which I and Senator ROCKEFELLER worked to establish in 1996. Finally the USF makes basic "life line" phone service available to low-income Americans, and gives assistance to rural health care providers.

The bill I introduce today is a corrective measure that addresses problems recently encountered by the Universal Service Administration Company, or "USAC," the private, nonprofit corporation that Congress created to administer the USF. Specifically, this bill deals with a decision by the FCC that ordered USAC to adhere to a special set of accounting rules that applies to government agencies. As a private company, USAC had utilized the same accounting rules as used by the private sector, but was told last year that it was subject to the Anti-Deficiency Act, a law that prevents government agencies from incurring financial obligations beyond the amount that has been appropriated to them by Congress. Adherence to government accounting rules is one of the Anti-Deficiency Act's requirements.

However, the switch to government accounting rules has caused an unforeseen disruption in the operation of the USF. In July 2004, USAC was notified that its method for accounting for funding commitments made to schools and libraries under the E-Rate program was illegal under the new government accounting rules, even though the method was perfectly proper under Generally Accepted Accounting Principles. As a result, USAC was forced to place an enormous amount of cash on its books by the close of the fiscal year, September 30; to freeze the program on August 3, preventing any ac-

tion on applications for E-Rate discounts right before the start of the school year; and to liquidate all of its assets, resulting in \$4.6 million in penalties and an estimated loss of \$30 million in expected interest income.

While USAC believes it can resume acting upon applications for E-Rate discount later this month, it notified the FCC on November 1 that, in order to continue compliance with the new government accounting rules, the USF contribution factor must be raised. The contribution factor is the portion of each customer's phone bill that is paid into the USF. Currently the charge is 8.9 percent of a customer's interstate calls made, but it will likely rise to 13 percent or more. Of course, this increase would be passed right on to consumers and businesses. Worse yet, this accounting change is likely to affect the other components of the USF as well, since they by and large operate in the same manner. If the USF as a whole is forced to make the same accounting changes that were imposed on E-Rate, the USF contribution factor may rise to 25 percent or more by January 1, 2005.

As a result of a seemingly innocuous accounting rule change, schools and libraries across the country have been unable to obtain much-needed discounts on their Internet connections, leading many to shut off their Internet service altogether. A similar strain may be encountered by the USF as a whole, jeopardizing price supports for rural- and low-income Americans on their phone service. And if no immediate action is taken, the telephone bills of American consumers and businesses are slated to rise significantly come the beginning of the new year.

My colleagues and I have examined this issue and worked closely with the FCC and our counterparts on the House Energy and Commerce Committee. We have determined that, given the pending phone bill increases on January 1, the only way to address this problem is to pass a law exempting the Universal Service Fund from the Anti-Deficiency Act through December 31, 2005. During this exemption period, USAC can continue to operate its programs in an orderly manner, phone bills can remain stable, and both Congress and the Executive Branch can work on a permanent solution to this problem. There is ample precedent for an exemption; indeed, many government programs are permanently exempted from the Anti-Deficiency Act, such as the National Park Service and the Conservation Trust.

This is a bipartisan effort among those Members who deal with telecommunications issues regularly. We have worked closely with the FCC and the House, and we have the support of the telecom industry, educators, and state and local governments. A permanent solution might require legislation, or it might not, but either way we will require sufficient time to craft that fix. This bill ensures that, in the

meantime, the status quo is preserve, schools and libraries receive their Internet funding, the USF continues to operate soundly, and consumers' telephone bills do not rise.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 146—TO DIRECT THE SECRETARY OF THE SENATE TO MAKE CORRECTIONS IN THE ENROLLMENT OF THE BILL S. 150

Mr. ALLEN (for himself, Mr. WYDEN, Mrs. HUTCHISON, Mr. ALEXANDER, and Mr. ENZI) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 146

Resolved by the Senate (the House of Representatives concurring). That, in the enrollment of the bill (S. 150) to extend the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act, the Secretary of the Senate shall make the following corrections:

(1) Amend subsection (a) of section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note), as added by section 3 of the bill, to read as follows:

“(a) PRE-OCTOBER 1998 TAXES.—

“(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date—

“(A) the tax was authorized by statute; and
“(B) either—

“(i) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

“(ii) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall not apply after November 1, 2007.

“(B) STATE TELECOMMUNICATIONS SERVICE TAX.—

“(i) DATE FOR TERMINATION.—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in clause (ii).

“(ii) DESCRIPTION OF TAX.—A State telecommunications service tax referred to in subclause (i) is a State tax—

“(I) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.”.

(2) Insert after section 6 of the bill the following:

“SEC. 6A. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.

“The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 6, is amended by adding at the end the following:

“SEC. 1109. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.

“Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005) and the defini-

tion of access line as determined by the Public Utility Commission of Texas in its ‘Order Adopting Amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing’, issued March 5, 2003, in Project No. 26412.”.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENTAL AND PUBLIC WORKS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, November 17, 2004 at 2:30 p.m. to conduct a business meeting regarding various projects included in GSA's fiscal year 2005 Capital Investment and Leasing Program, to authorize various courthouse construction projects, and to consider Army Corps of Engineers study resolutions.

The meeting will be held in SD 406.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. ALLEN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, November 17, 2004, at 3 p.m. in Room 216 of the Hart Senate Office Building to conduct a business meeting on pending Committee matters, to be followed immediately by an oversight hearing on the In Re Tribal Lobbying Matters, et al.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. ALLEN. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space be authorized to meet on Wednesday, November 17, 2004, at 2 p.m. on Prenatal Genetic Testing Technology.

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

PRIVILEGES OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that the privilege of the floor be granted to the following fellow and interns of the Finance Committee staff during consideration of S. 2986, the debt limit bill: Mary Tuckerman, Priya Mahanti, Audrey Schultz, Brittney McClary, Kelsie Eggensperger, Paige Lester, Jeremy Sylestine, Jodi George, Janis Lazda, Chris Knopes, Scott Landes, and Cuong Huynh.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JOHNSON. Mr. President, I ask unanimous consent that floor privileges for the remainder of the week be granted to Jimmy Loyless, who is a banking fellow in my office.

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

MISCELLANEOUS TRADE AND TECHNICAL CORRECTIONS ACT—CONFERENCE REPORT

Mr. FRIST. Mr. President, I move to proceed to the conference report to accompany H.R. 1047, the Miscellaneous Trade and Technical Corrections Act.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1047), to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by all conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of October 8, 2004.)

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 1047, a bill to amend the harmonized tariff schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

Bill Frist, Chuck Grassley, George Allen, Craig Thomas, Jon Kyl, Mike Crapo, Robert F. Bennett, John Ensign, Pete Domenici, Lamar Alexander, John E. Sununu, Richard G. Lugar, George Voinovich, Peter Fitzgerald, Trent Lott, Lindsey Graham, Jim Talent.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

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

Mr. FRIST. For the information of all Members, this cloture motion will ripen on Friday morning. If cloture is invoked—and I think it will be—I hope we can move quickly to the adoption of the conference report.

NEW SHIPPER REVIEW AMENDMENT ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of S. 2991, which was introduced earlier today by Senators COCHRAN and BYRD.

The PRESIDING OFFICER. The clerk will report the bill by title.