authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

SA 3220. Mr. LOTT (for himself, Mr. COCHRAN, Mr. CHAMBLISS, Ms. SNOWE, and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table.

SA 3221. Mr. LOTT (for himself, Ms. SNOWE, Mr. COCHRAN, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3222. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3223. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3224. Ms. COLLINS (for herself and Mr. LEVIN) submitted an amendment intended to be proposed by her to the bill S. 2400, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3176. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, between lines 9 and 10, insert the following:

SEC. 642. FULL SBP SURVIVOR BENEFITS FOR SURVIVING SPOUSES OVER AGE 62.

(a) PHASED INCREASE IN BASIC ANNUITY TO 55 PERCENT.—(1) Subsection (a)(1)(B)(i) of section 1451 of title 10, United States Code, is amended by striking ''35 percent of the base amount.'' and inserting ''the product of the base amount and the percent applicable for the month. The percent applicable for a month is 35 percent for months beginning before October 2005, 40 percent for months beginning after September 2005 and before April 2006, 45 percent for months beginning after March 2006 and before April 2007, 50 percent for months beginning after March 2007 and before April 2008, and 55 percent for months beginning after March 2008.''.

(2) Subsection (a)(2)(B)(i)(I) of such section is amended by striking ''35 percent'' and inserting ''the percent specified under paragraph (1)(B)(i) as being applicable for the month''.

(3) Subsection (c)(1)(B)(i) of such section is amended—

(A) by striking ''35 percent'' and inserting ''the applicable percent''; and

(B) by adding at the end the following: ''The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for the month.''.

(4) The heading for subsection (d)(2)(A) of such section is amended to read as follows: ''COMPUTATION OF ANNUITY.—''.

(b) PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.—(1) Section 1457(b) of title 10, United States Code, is amended—

(A) by striking ''5, 10, 15, or 20 percent'' and inserting ''the applicable percent''; and

(B) by inserting after the first sentence the following: ''The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months beginning before October 2005, 15 percent for months beginning after September 2005 and before April 2006, 10 percent for months beginning after March 2006 and before April 2007, and 5 percent for months beginning after March 2007.''.

(2) Effective on April 1, 2008, chapter 73 of such title is amended—

(A) by striking subchapter III; and

(B) by striking the item relating to subchapter III in the table of subchapters at the beginning of that chapter.

(c) RECOMPUTATION OF ANNUITIES.—(1) Effective on the first day of each month referred to in paragraph (2)—

(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

(B) each supplemental survivor annuity under section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

(2) The requirements for recomputation of annuities under paragraph (1) apply with respect to the following months:

(A) October 2005.

(B) April 2006.

(C) April 2007.

(D) April 2008.

(d) RECOMPUTATION OF RETIRED PAY REDUCTIONS FOR SUPPLEMENTAL SURVIVOR ANNUITIES.—The Secretary of Defense shall take such actions as are necessitated by the amendments made by subsection (b) and the requirements of subsection (c)(1)(B) to ensure that the reductions in retired pay under section 1460 of title 10, United States Code, are adjusted to achieve the objectives set forth in subsection (b) of that section.

(e) OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.—(1)(A) An eligible retired or former member may elect to participate in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, during the open enrollment period specified in paragraph (5).

(B) An eligible retired or former member who elects under subparagraph (A) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(C) For purposes of subparagraphs (A) and (B), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(i) is entitled to retired pay; or

(ii) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

(D) A person making an election under subparagraph (A) by reason of eligibility under subparagraph (C)(i) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(E) A person making an election under subparagraph (A) by reason of eligibility under subparagraph (C)(ii) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(2) A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

(A) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

(B) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

(3)(A) A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(B) Except as provided in subparagraph (C), a person is eligible to make an election under subparagraph (A) if on the day before the first day of the open enrollment period the person—

(i) is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under paragraph (2) of this subsection; and

(ii) under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(C) A person is not eligible to make an election under subparagraph (A) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under subparagraph (A) as in the case of any other participant in the Survivor Benefit Plan.

(4) An election under this subsection shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under paragraph (1) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code. Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(5) The open enrollment period under this section shall be the one-year period beginning on October 1, 2005.

(6) If a person making an election under this subsection dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if

the deceased person had died after the end of such two-year period.

(7) The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this subsection in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(8) The Secretary of Defense may require that the premium for a person making an election under paragraph (1)(A) or (2) include, in addition to the amount required under section 1452(a) of title 10, United States Code, an amount determined under regulations prescribed by the Secretary of Defense for the purposes of this subsection. Any such amount shall be stated as a percentage of the base amount of the person making the election and shall reflect the number of years that have elapsed since the person retired, but may not exceed 4.5 percent of that person's base amount.

(f) REPORT CONCERNING OPEN SEASON.—Not later than July 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the open season authorized by subsection (e) for the Survivor Benefit Plan. The report shall include the following:

(1) A description of the Secretary's plans for implementation of the open season.

(2) The Secretary's estimates of the costs associated with the open season, including any anticipated effect of the open season on the actuarial status of the Department of Defense Military Retirement Fund.

(3) Any recommendation by the Secretary for further legislative action.

SA 3177. Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 176, after line 21, insert the following:

SEC. 844. APPLICABILITY OF BERRY AMENDMENT TO PROCUREMENTS OF ARMED FORCES UNIFORMS AND UNIFORM ITEMS WITH NONAPPROPRIATED FUNDS.

(a) APPLICABILITY.—Section 2533a of title 10, United States Code, is amended—

(1) in subsection (b)(1), by striking subparagraph (B) and inserting the following:

''(B) clothing, including—

''(i) uniforms (including uniform headware) of the armed forces; and

''(ii) insignia, medals, other award appurtenances and decorations, other devices and accessories, belts, and belt buckles for armed forces uniforms;''; and

(2) in subsection (g), by inserting '', other than uniforms and uniform items described in clauses (i) and (ii) of subsection (b)(1)(B),'' after ''items''.

(b) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act and shall apply with respect to expenditures made on or after such effective date.

SA 3178. Mr. GREGG (for himself and Mr. KENNEDY) proposed an amendment to the bill S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Project BioShield Act of 2004''.

SEC. 2. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT—AUTHORITIES.

(a) IN GENERAL.—Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 319F the following section:

''SEC. 319F–1. AUTHORITY FOR USE OF CERTAIN PROCEDURES REGARDING QUALIFIED COUNTERMEASURE RESEARCH AND DEVELOPMENT ACTIVITIES.

''(a) IN GENERAL.—

''(1) AUTHORITY.—In conducting and supporting research and development activities regarding countermeasures under section 319F(h), the Secretary may conduct and support such activities in accordance with this section and, in consultation with the Director of the National Institutes of Health, as part of the program under section 446, if the activities concern qualified countermeasures.

''(2) QUALIFIED COUNTERMEASURE.—For purposes of this section, the term 'qualified countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to—

''(A) treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

''(B) treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in subparagraph (A).

''(3) INTERAGENCY COOPERATION.—

''(A) IN GENERAL.—In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

''(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section.

''(4) AVAILABILITY OF FACILITIES TO THE SECRETARY.—In any grant, contract, or cooperative agreement entered into under the authority provided in this section with respect to a biocontainment laboratory or other related or ancillary specialized research facility that the Secretary determines necessary for the purpose of performing, administering, or supporting qualified countermeasure research and development, the Secretary may provide that the facility that is the object of such grant, contract, or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

''(5) TRANSFERS OF QUALIFIED COUNTERMEASURES.—Each agreement for an award of a grant, contract, or cooperative agreement under section 319F(h) for the development of a qualified countermeasure shall provide that the recipient of the award will comply with all applicable export-related controls with respect to such countermeasure.

''(b) EXPEDITED PROCUREMENT AUTHORITY.—

''(1) INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR QUALIFIED COUNTERMEASURE PROCUREMENTS.—

''(A) IN GENERAL.—For any procurement by the Secretary of property or services for use (as determined by the Secretary) in performing, administering, or supporting qualified countermeasure research or development activities under this section that the Secretary determines necessary to respond to pressing research and development needs under this section, the amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as applicable pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), shall be deemed to be $25,000,000 in the administration, with respect to such procurement, of—

''(i) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

''(ii) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

''(B) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding subparagraph (A) and the provision of law and regulations referred to in such subparagraph, each of the following provisions shall apply to procurements described in this paragraph to the same extent that such provisions would apply to such procurements in the absence of subparagraph (A):

''(i) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

''(ii) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57(a) and (b)).

''(iii) Section 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d) (relating to the examination of contractor records).

''(iv) Section 3131 of title 40, United States Code (relating to bonds of contractors of public buildings or works).

''(v) Subsection (a) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) (relating to contingent fees to middlemen).

''(vi) Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

''(vii) Section 1354 of title 31, United States Code (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

''(C) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements that are under this paragraph, including requirements with regard to documenting the justification for use of the authority in this paragraph with respect to the procurement involved.

''(D) AUTHORITY TO LIMIT COMPETITION.—In conducting a procurement under this paragraph, the Secretary may not use the authority provided for under subparagraph (A) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

''(2) PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.—

''(A) IN GENERAL.—In using the authority provided in section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)) to use procedures other than competitive procedures in the case of a procurement described in paragraph (1) of this subsection, the phrase 'available from only one responsible source' in such section 303(c)(1) shall be deemed to mean 'available from only one responsible source or only from a limited number of responsible sources'.

''(B) RELATION TO OTHER AUTHORITIES.—The authority under subparagraph (A) is in addition to any other authority to use procedures other than competitive procedures.

''(C) APPLICABLE GOVERNMENT-WIDE REGULATIONS.—The Secretary shall implement this paragraph in accordance with government-wide regulations implementing such section 303(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

''(3) INCREASED MICROPURCHASE THRESHOLD.—

''(A) IN GENERAL.—For a procurement described by paragraph (1), the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be deemed to be $15,000 in the administration of that section with respect to such procurement.

''(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for purchases that are under this paragraph and that are greater than $2,500.

''(C) EXCEPTION TO PREFERENCE FOR PURCHASE CARD MECHANISM.—No provision of law establishing a preference for using a Government purchase card method for purchases shall apply to purchases that are under this paragraph and that are greater than $2,500.

''(4) REVIEW.—

''(A) REVIEW ALLOWED.—Notwithstanding subsection (f), section 1491 of title 28, United States Code, and section 3556 of title 31 of such Code, review of a contracting agency decision relating to a procurement described in paragraph (1) may be had only by filing a protest—

''(i) with a contracting agency; or

''(ii) with the Comptroller General under subchapter V of chapter 35 of title 31, United States Code.

''(B) OVERRIDE OF STAY OF CONTRACT AWARD OR PERFORMANCE COMMITTED TO AGENCY DISCRETION.—Notwithstanding section 1491 of title 28, United States Code, and section 3553 of title 31 of such Code, the following authorizations by the head of a procuring activity are committed to agency discretion:

''(i) An authorization under section 3553(c)(2) of title 31, United States Code, to award a contract for a procurement described in paragraph (1) of this subsection.

''(ii) An authorization under section 3553(d)(3)(C) of such title to perform a contract for a procurement described in paragraph (1) of this subsection.

''(c) AUTHORITY TO EXPEDITE PEER REVIEW.—

''(1) IN GENERAL.—The Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, deems appropriate to obtain assessment of scientific and technical merit and likely contribution to the field of qualified countermeasure research, in place of the peer review and advisory council review procedures that would be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494, as applicable to a grant, contract, or cooperative agreement—

''(A) that is for performing, administering, or supporting qualified countermeasure research and development activities; and

''(B) the amount of which is not greater than $1,500,000.

''(2) SUBSEQUENT PHASES OF RESEARCH.—The Secretary's determination of whether to employ expedited peer review with respect to any subsequent phases of a research grant, contract, or cooperative agreement under this section shall be determined without regard to the peer review procedures used for any prior peer review of that same grant, contract, or cooperative agreement. Nothing in the preceding sentence may be construed to impose any requirement with respect to peer review not otherwise required under any other law or regulation.

''(d) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—

''(1) IN GENERAL.—For the purpose of performing, administering, or supporting qualified countermeasure research and development activities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, United States Code, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications, except that in no case shall the compensation provided to any such expert or consultant exceed the daily equivalent of the annual rate of compensation for the President.

''(2) FEDERAL TORT CLAIMS ACT COVERAGE.—

''(A) IN GENERAL.—A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall, subject to a determination by the Secretary, be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28, United States Code, for money damages for personal injury, including death, resulting from performance of functions under such contract.

''(B) EXCLUSIVITY OF REMEDY.—The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the entity involved (person, officer, employee, or governing board member) for any act or omission within the scope of the Federal Tort Claims Act.

''(C) RECOURSE IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(i) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this paragraph, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover against any entity identified in subparagraph (B) for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any such entity to carry out any obligation or responsibility assumed by such entity under a contract with the United States or from any grossly negligent or reckless conduct or intentional or willful misconduct on the part of such entity.

''(ii) VENUE.—The United States may maintain an action under this subparagraph against such entity in the district court of the United States in which such entity resides or has its principal place of business.

''(3) INTERNAL CONTROLS TO BE INSTITUTED.—

''(A) IN GENERAL.—The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

''(B) DETERMINATION OF EMPLOYEE STATUS TO BE FINAL.—A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding on the Secretary and the Attorney General and other parties to any civil action or proceeding.

''(4) NUMBER OF PERSONAL SERVICES CONTRACTS LIMITED.—The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

''(e) STREAMLINED PERSONNEL AUTHORITY.—

''(1) IN GENERAL.—In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, without regard to those provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support qualified countermeasure research and development activities in carrying out this section.

''(2) LIMITATIONS.—The authority provided for under paragraph (1) shall be exercised in a manner that—

''(A) recruits and appoints individuals based solely on their abilities, knowledge, and skills;

''(B) does not discriminate for or against any applicant for employment on any basis described in section 2302(b)(1) of title 5, United States Code;

''(C) does not allow an official to appoint an individual who is a relative (as defined in section 3110(a)(3) of such title) of such official;

''(D) does not discriminate for or against an individual because of the exercise of any activity described in paragraph (9) or (10) of section 2302(b) of such title; and

''(E) accords a preference, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of such title).

''(3) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for appointments under this subsection.

''(f) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions by the Secretary under the authority of this section are committed to agency discretion.''.

(b) TECHNICAL AMENDMENT.—Section 481A of the Public Health Service Act (42 U.S.C. 287a–2) is amended—

(1) in subsection (a)(1), by inserting ''or the Director of the National Institute of Allergy

and Infectious Diseases'' after ''Director of the Center'';

(2) in subsection (c)—

(A) in paragraph (1), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''; and

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking ''subsection (i)'' and inserting ''subsection (i)(1)'';

(3) in subsection (d), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(4) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'';

(ii) in subparagraph (A), by inserting ''(or, in the case of the Institute, 75 percent)'' after ''50 percent''; and

(iii) in subparagraph (B), by inserting ''(or, in the case of the Institute, 75 percent)'' after ''40 percent'';

(B) in paragraph (2), by inserting ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''; and

(C) in paragraph (4), by inserting ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director'';

(5) in subsection (f)—

(A) in paragraph (1), by inserting ''in the case of an award by the Director of the Center,'' before ''the applicant''; and

(B) in paragraph (2), by inserting ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''; and

(6) in subsection (i)—

(A) by striking ''APPROPRIATIONS.—For the purpose of carrying out this section,'' and inserting the following: ''APPROPRIATIONS.—

''(1) CENTER.—For the purpose of carrying out this section with respect to the Center,''; and

(B) by adding at the end the following:

''(2) NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES.—For the purpose of carrying out this section with respect to the National Institute of Allergy and Infectious Diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.''.

(c) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS.—Section 2106 of the Public Health Service Act (42 U.S.C. 300aa–6) is amended—

(1) in subsection (a), by striking ''authorized to be appropriated'' and all that follows and inserting the following: ''authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.''; and

(2) in subsection (b), by striking ''authorized to be appropriated'' and all that follows and inserting the following: ''authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.''.

(d) TECHNICAL AMENDMENTS.—Section 319F of the Public Health Service Act (42 U.S.C. 247d–6) is amended—

(1) in subsection (a), by inserting ''the Secretary of Homeland Security,'' after ''Management Agency,''; and

(2) in subsection (h)(4)(B), by striking ''to diagnose conditions'' and inserting ''to treat, identify, or prevent conditions''.

(e) RULE OF CONSTRUCTION.—Nothing in this section has any legal effect on sections 302(2), 302(4), 304(a), or 304(b) of the Homeland Security Act of 2002.

SEC. 3. BIOMEDICAL COUNTERMEASURES PROCUREMENT.

(a) ADDITIONAL AUTHORITY REGARDING STRATEGIC NATIONAL STOCKPILE.—

(1) TRANSFER OF PROGRAM.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (116 Stat. 611; 42 U.S.C. 300hh–12) is transferred from such Act to the Public Health Service Act, is redesignated as section 319F–2, and is inserted after section 319F–1 of the Public Health Service Act (as added by section 2 of this Act).

(2) ADDITIONAL AUTHORITY.—Section 319F–2 of the Public Health Service Act, as added by paragraph (1), is amended to read as follows:

''SEC. 319F–2. STRATEGIC NATIONAL STOCKPILE.

''(a) STRATEGIC NATIONAL STOCKPILE.—

''(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Homeland Security (referred to in this section as the 'Homeland Security Secretary'), shall maintain a stockpile or stockpiles of drugs, vaccines and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the Secretary to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency.

''(2) PROCEDURES.—The Secretary, in managing the stockpile under paragraph (1), shall—

''(A) consult with the working group under section 319F(a);

''(B) ensure that adequate procedures are followed with respect to such stockpile for inventory management and accounting, and for the physical security of the stockpile;

''(C) in consultation with Federal, State, and local officials, take into consideration the timing and location of special events;

''(D) review and revise, as appropriate, the contents of the stockpile on a regular basis to ensure that emerging threats, advanced technologies, and new countermeasures are adequately considered;

''(E) devise plans for the effective and timely supply-chain management of the stockpile, in consultation with appropriate Federal, State and local agencies, and the public and private health care infrastructure;

''(F) deploy the stockpile as required by the Secretary of Homeland Security to respond to an actual or potential emergency;

''(G) deploy the stockpile at the discretion of the Secretary to respond to an actual or potential public health emergency or other situation in which deployment is necessary to protect the public health or safety; and

''(H) ensure the adequate physical security of the stockpile.

''(b) SMALLPOX VACCINE DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile under subsection (a) includes an amount of vaccine against smallpox as determined by such Secretary to be sufficient to meet the health security needs of the United States.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccines from sources other than the stockpile described in subsection (a).

''(c) ADDITIONAL AUTHORITY REGARDING PROCUREMENT OF CERTAIN BIOMEDICAL COUNTERMEASURES; AVAILABILITY OF SPECIAL RESERVE FUND.—

''(1) IN GENERAL.—

''(A) USE OF FUND.—A security countermeasure may, in accordance with this subsection, be procured with amounts in the special reserve fund under paragraph (10).

''(B) SECURITY COUNTERMEASURE.—For purposes of this subsection, the term 'security countermeasure' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that—

''(i)(I) the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent identified as a material threat under paragraph (2)(A)(ii), or to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent;

''(II) the Secretary determines under paragraph (2)(B)(ii) to be a necessary countermeasure; and

''(III)(aa) is approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act or licensed under section 351 of this Act; or

''(bb) is a countermeasure for which the Secretary determines that sufficient and satisfactory clinical experience or research data (including data, if available, from pre-clinical and clinical trials) support a reasonable conclusion that the countermeasure will qualify for approval or licensing within eight years after the date of a determination under paragraph (5); or

''(ii) is authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act.

''(2) DETERMINATION OF MATERIAL THREATS.—

''(A) MATERIAL THREAT.—The Homeland Security Secretary, in consultation with the Secretary and the heads of other agencies as appropriate, shall on an ongoing basis—

''(i) assess current and emerging threats of chemical, biological, radiological, and nuclear agents; and

''(ii) determine which of such agents present a material threat against the United States population sufficient to affect national security.

''(B) PUBLIC HEALTH IMPACT; NECESSARY COUNTERMEASURES.—The Secretary shall on an ongoing basis—

''(i) assess the potential public health consequences for the United States population of exposure to agents identified under subparagraph (A)(ii); and

''(ii) determine, on the basis of such assessment, the agents identified under subparagraph (A)(ii) for which countermeasures are necessary to protect the public health.

''(C) NOTICE TO CONGRESS.—The Secretary and the Homeland Security Secretary shall promptly notify the designated congressional committees (as defined in paragraph (10)) that a determination has been made pursuant to subparagraph (A) or (B).

''(D) ASSURING ACCESS TO THREAT INFORMATION.—In making the assessment and determination required under subparagraph (A), the Homeland Security Secretary shall use all relevant information to which such Secretary is entitled under section 202 of the Homeland Security Act of 2002, including but not limited to information, regardless of its level of classification, relating to current and emerging threats of chemical, biological, radiological, and nuclear agents.

''(3) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The

Secretary, in consultation with the Homeland Security Secretary, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under paragraph (2).

''(4) CALL FOR DEVELOPMENT OF COUNTERMEASURES; COMMITMENT FOR RECOMMENDATION FOR PROCUREMENT.—

''(A) PROPOSAL TO THE PRESIDENT.—If, pursuant to an assessment under paragraph (3), the Homeland Security Secretary and the Secretary make a determination that a countermeasure would be appropriate but is either currently unavailable for procurement as a security countermeasure or is approved, licensed, or cleared only for alternative uses, such Secretaries may jointly submit to the President a proposal to—

''(i) issue a call for the development of such countermeasure; and

''(ii) make a commitment that, upon the first development of such countermeasure that meets the conditions for procurement under paragraph (5), the Secretaries will, based in part on information obtained pursuant to such call, make a recommendation under paragraph (6) that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

''(B) COUNTERMEASURE SPECIFICATIONS.—The Homeland Security Secretary and the Secretary shall, to the extent practicable, include in the proposal under subparagraph (A)—

''(i) estimated quantity of purchase (in the form of number of doses or number of effective courses of treatments regardless of dosage form);

''(ii) necessary measures of minimum safety and effectiveness;

''(iii) estimated price for each dose or effective course of treatment regardless of dosage form; and

''(iv) other information that may be necessary to encourage and facilitate research, development, and manufacture of the countermeasure or to provide specifications for the countermeasure.

''(C) PRESIDENTIAL APPROVAL.—If the President approves a proposal under subparagraph (A), the Homeland Security Secretary and the Secretary shall make known to persons who may respond to a call for the countermeasure involved—

''(i) the call for the countermeasure;

''(ii) specifications for the countermeasure under subparagraph (B); and

''(iii) the commitment described in subparagraph (A)(ii).

''(5) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR FUNDING FROM SPECIAL RESERVE FUND.—

''(A) IN GENERAL.—The Secretary, in accordance with the provisions of this paragraph, shall identify specific security countermeasures that the Secretary determines, in consultation with the Homeland Security Secretary, to be appropriate for inclusion in the stockpile under subsection (a) pursuant to procurements made with amounts in the special reserve fund under paragraph (10) (referred to in this subsection individually as a 'procurement under this subsection').

''(B) REQUIREMENTS.—In making a determination under subparagraph (A) with respect to a security countermeasure, the Secretary shall determine and consider the following:

''(i) The quantities of the product that will be needed to meet the needs of the stockpile.

''(ii) The feasibility of production and delivery within eight years of sufficient quantities of the product.

''(iii) Whether there is a lack of a significant commercial market for the product at the time of procurement, other than as a security countermeasure.

''(6) RECOMMENDATION FOR PRESIDENT'S APPROVAL.—

''(A) RECOMMENDATION FOR PROCUREMENT.—In the case of a security countermeasure that the Secretary has, in accordance with paragraphs (3) and (5), determined to be appropriate for procurement under this subsection, the Homeland Security Secretary and the Secretary shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

''(B) PRESIDENTIAL APPROVAL.—The special reserve fund under paragraph (10) is available for a procurement of a security countermeasure only if the President has approved a recommendation under subparagraph (A) regarding the countermeasure.

''(C) NOTICE TO DESIGNATED CONGRESSIONAL COMMITTEES.—The Secretary and the Homeland Security Secretary shall notify the designated congressional committees of each decision of the President to approve a recommendation under subparagraph (A). Such notice shall include an explanation of the decision to make available the special reserve fund under paragraph (10) for procurement of such a countermeasure, including, where available, the number of, nature of, and other information concerning potential suppliers of such countermeasure, and whether other potential suppliers of the same or similar countermeasures were considered and rejected for procurement under this section and the reasons therefor.

''(D) SUBSEQUENT SPECIFIC COUNTERMEASURES.—Procurement under this subsection of a security countermeasure for a particular purpose does not preclude the subsequent procurement under this subsection of any other security countermeasure for such purpose if the Secretary has determined under paragraph (5)(A) that such countermeasure is appropriate for inclusion in the stockpile and if, as determined by the Secretary, such countermeasure provides improved safety or effectiveness, or for other reasons enhances preparedness to respond to threats of use of a biological, chemical, radiological, or nuclear agent. Such a determination by the Secretary is committed to agency discretion.

''(E) RULE OF CONSTRUCTION.—Recommendations and approvals under this paragraph apply solely to determinations that the special reserve fund under paragraph (10) will be made available for a procurement of a security countermeasure, and not to the substance of contracts for such procurement or other matters relating to awards of such contracts.

''(7) PROCUREMENT.—

''(A) IN GENERAL.—For purposes of a procurement under this subsection that is approved by the President under paragraph (6), the Homeland Security Secretary and the Secretary shall have responsibilities in accordance with subparagraphs (B) and (C).

''(B) INTERAGENCY AGREEMENT; COSTS.—

''(i) INTERAGENCY AGREEMENT.—The Homeland Security Secretary shall enter into an agreement with the Secretary for procurement of a security countermeasure in accordance with the provisions of this paragraph. The special reserve fund under paragraph (10) shall be available for payments made by the Secretary to a vendor for such procurement.

''(ii) OTHER COSTS.—The actual costs to the Secretary under this section, other than the costs described in clause (i), shall be paid from the appropriation provided for under subsection (f)(1).

''(C) PROCUREMENT.—

''(i) IN GENERAL.—The Secretary shall be responsible for—

''(I) arranging for procurement of a security countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this subparagraph; and

''(II) promulgating such regulations as the Secretary determines necessary to implement the provisions of this subsection.

''(ii) CONTRACT TERMS.—A contract for procurements under this subsection shall (or, as specified below, may) include the following terms:

''(I) PAYMENT CONDITIONED ON DELIVERY.—The contract shall provide that no payment may be made until delivery has been made of a portion, acceptable to the Secretary, of the total number of units contracted for, except that, notwithstanding any other provision of law, the contract may provide that, if the Secretary determines (in the Secretary's discretion) that an advance payment is necessary to ensure success of a project, the Secretary may pay an amount, not to exceed 10 percent of the contract amount, in advance of delivery. The contract shall provide that such advance payment is required to be repaid if there is a failure to perform by the vendor under the contract. Nothing in this subclause may be construed as affecting rights of vendors under provisions of law or regulation (including the Federal Acquisition Regulation) relating to termination of contracts for the convenience of the Government.

''(II) DISCOUNTED PAYMENT.—The contract may provide for a discounted price per unit of a product that is not licensed, cleared, or approved as described in paragraph (1)(B)(i)(III)(aa) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed, cleared, or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing, clearance, or approval).

''(III) CONTRACT DURATION.—The contract shall be for a period not to exceed five years, except that, in first awarding the contract, the Secretary may provide for a longer duration, not exceeding eight years, if the Secretary determines that complexities or other difficulties in performance under the contract justify such a period. The contract shall be renewable for additional periods, none of which shall exceed five years.

''(IV) STORAGE BY VENDOR.—The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Federal Government under the contract, for such period and under such terms and conditions as the Secretary may specify, and in such case amounts from the special reserve fund under paragraph (10) shall be available for costs of shipping, handling, storage, and related costs for such product.

''(V) PRODUCT APPROVAL.—The contract shall provide that the vendor seek approval, clearance, or licensing of the product from the Secretary; for a timetable for the development of data and other information to support such approval, clearance, or licensing; and that the Secretary may waive part or all of this contract term on request of the vendor or on the initiative of the Secretary.

''(VI) NON-STOCKPILE TRANSFERS OF SECURITY COUNTERMEASURES.—The contract shall provide that the vendor will comply with all applicable export-related controls with respect to such countermeasure.

''(iii) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES.—

''(I) IN GENERAL.—If the Secretary determines that there is a pressing need for a procurement of a specific countermeasure, the amount of the procurement under this subsection shall be deemed to be below the threshold amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), for purposes of application to such procurement, pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), of—

''(aa) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

''(bb) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

''(II) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding subclause (I) and the provision of law and regulations referred to in such clause, each of the following provisions shall apply to procurements described in this clause to the same extent that such provisions would apply to such procurements in the absence of subclause (I):

''(aa) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

''(bb) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57(a) and (b)).

''(cc) Section 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d) (relating to the examination of contractor records).

''(dd) Section 3131 of title 40, United States Code (relating to bonds of contractors of public buildings or works).

''(ee) Subsection (a) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) (relating to contingent fees to middlemen).

''(ff) Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

''(gg) Section 1354 of title 31, United States Code (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

''(III) INTERNAL CONTROLS TO BE ESTABLISHED.—The Secretary shall establish appropriate internal controls for procurements made under this clause, including requirements with respect to documentation of the justification for the use of the authority provided under this paragraph with respect to the procurement involved.

''(IV) AUTHORITY TO LIMIT COMPETITION.—In conducting a procurement under this subparagraph, the Secretary may not use the authority provided for under subclause (I) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

''(iv) PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.—

''(I) IN GENERAL.—In using the authority provided in section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)) to use procedures other than competitive procedures in the case of a procurement under this subsection, the phrase 'available from only one responsible source' in such section 303(c)(1) shall be deemed to mean 'available from only one responsible source or only from a limited number of responsible sources'.

''(II) RELATION TO OTHER AUTHORITIES.—The authority under subclause (I) is in addition to any other authority to use procedures other than competitive procedures.

''(III) APPLICABLE GOVERNMENT-WIDE REGULATIONS.—The Secretary shall implement this clause in accordance with government-wide regulations implementing such section 303(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

''(v) PREMIUM PROVISION IN MULTIPLE AWARD CONTRACTS.—

''(I) IN GENERAL.—If, under this subsection, the Secretary enters into contracts with more than one vendor to procure a security countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

''(aa) identifies an increment of the total quantity of security countermeasure required, whether by percentage or by numbers of units; and

''(bb) promises to pay one or more specified premiums based on the priority of such vendors' production and delivery of the increment identified under item (aa), in accordance with the terms and conditions of the contract.

''(II) DETERMINATION OF GOVERNMENT'S REQUIREMENT NOT REVIEWABLE.—If the Secretary includes in each of a set of contracts a provision as described in subclause (I), such Secretary's determination of the total quantity of security countermeasure required, and any amendment of such determination, is committed to agency discretion.

''(vi) EXTENSION OF CLOSING DATE FOR RECEIPT OF PROPOSALS NOT REVIEWABLE.—A decision by the Secretary to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

''(vii) LIMITING COMPETITION TO SOURCES RESPONDING TO REQUEST FOR INFORMATION.—In conducting a procurement under this subsection, the Secretary may exclude a source that has not responded to a request for information under section 303A(a)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(a)(1)(B)) if such request has given notice that the Secretary may so exclude such a source.

''(8) INTERAGENCY COOPERATION.—

''(A) IN GENERAL.—In carrying out activities under this section, the Homeland Security Secretary and the Secretary are authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

''(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section to the Homeland Security Secretary or to the Secretary.

''(9) RESTRICTIONS ON USE OF FUNDS.—Amounts in the special reserve fund under paragraph (10) shall not be used to pay—

''(A) costs for the purchase of vaccines under procurement contracts entered into before the date of the enactment of the Project BioShield Act of 2004; or

''(B) costs other than payments made by the Secretary to a vendor for a procurement of a security countermeasure under paragraph (7).

''(10) DEFINITIONS.—

''(A) SPECIAL RESERVE FUND.—For purposes of this subsection, the term 'special reserve fund' has the meaning given such term in section 510 of the Homeland Security Act of 2002.

''(B) DESIGNATED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term 'designated congressional committees' means the following committees of the Congress:

''(i) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

''(ii) In the Senate: the appropriate committees.

''(d) DISCLOSURES.—No Federal agency shall disclose under section 552 of title 5, United States Code, any information identifying the location at which materials in the stockpile under subsection (a) are stored.

''(e) DEFINITION.—For purposes of subsection (a), the term 'stockpile' includes—

''(1) a physical accumulation (at one or more locations) of the supplies described in subsection (a); or

''(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to such Secretary supplies described in subsection (a).

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) STRATEGIC NATIONAL STOCKPILE.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $640,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006. Such authorization is in addition to amounts in the special reserve fund referred to in subsection (c)(10)(A).

''(2) SMALLPOX VACCINE DEVELOPMENT.—For the purpose of carrying out subsection (b), there are authorized to be appropriated $509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.''.

(b) AMENDMENTS TO HOMELAND SECURITY ACT OF 2002.—Title V of the Homeland Security Act of 2002 (116 Stat. 2212; 6 U.S.C. 311 et seq.) is amended—

(1) in section 502(3) (6 U.S.C. 312(3))—

(A) in subparagraph (B), by striking ''the Strategic National Stockpile,''; and

(B) in subparagraph (D), by inserting '', including requiring deployment of the Strategic National Stockpile,'' after ''resources''; and

(2) by adding at the end the following:

''SEC. 510. PROCUREMENT OF SECURITY COUNTERMEASURES FOR STRATEGIC NATIONAL STOCKPILE.

''(a) AUTHORIZATION OF APPROPRIATIONS.—For the procurement of security countermeasures under section 319F–2(c) of the Public Health Service Act (referred to in this section as the 'security countermeasures program'), there is authorized to be appropriated up to $5,593,000,000 for the fiscal years 2004 through 2013. Of the amounts appropriated under the preceding sentence, not to exceed $3,418,000,000 may be obligated during the fiscal years 2004 through 2008, of which not to exceed $890,000,000 may be obligated during fiscal year 2004.

''(b) SPECIAL RESERVE FUND.—For purposes of the security countermeasures program, the term 'special reserve fund' means the 'Biodefense Countermeasures' appropriations account or any other appropriation made under subsection (a).

''(c) AVAILABILITY.—Amounts appropriated under subsection (a) become available for a procurement under the security countermeasures program only upon the approval by the President of such availability for the procurement in accordance with paragraph (6)(B) of such program.

''(d) RELATED AUTHORIZATIONS OF APPROPRIATIONS.—

''(1) THREAT ASSESSMENT CAPABILITIES.—For the purpose of carrying out the responsibilities of the Secretary for terror threat assessment under the security countermeasures program, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006, for the hiring of professional personnel within the Directorate for Information Analysis and Infrastructure Protection, who shall be analysts responsible for chemical, biological, radiological, and nuclear threat assessment (including but not limited to analysis of chemical, biological, radiological, and nuclear agents, the means by which such agents could be weaponized or used in a terrorist attack, and the capabilities, plans, and intentions of terrorists and other non-state actors who may have or acquire such agents). All such analysts shall meet the applicable standards and qualifications for the performance of intelligence activities promulgated by the Director of Central Intelligence pursuant to section 104 of the National Security Act of 1947.

''(2) INTELLIGENCE SHARING INFRASTRUCTURE.—For the purpose of carrying out the acquisition and deployment of secure facilities (including information technology and physical infrastructure, whether mobile and temporary, or permanent) sufficient to permit the Secretary to receive, not later than 180 days after the date of enactment of the Project BioShield Act of 2004, all classified information and products to which the Under Secretary for Information Analysis and Infrastructure Protection is entitled under subtitle A of title II, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.''.

(c) STOCKPILE FUNCTIONS TRANSFERRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), there shall be transferred to the Secretary of Health and Human Services the functions, personnel, assets, unexpended balances, and liabilities of the Strategic National Stockpile, including the functions of the Secretary of Homeland Security relating thereto.

(2) EXCEPTIONS.—

(A) FUNCTIONS.—The transfer of functions pursuant to paragraph (1) shall not include such functions as are explicitly assigned to the Secretary of Homeland Security by this Act (including the amendments made by this Act).

(B) ASSETS AND UNEXPENDED BALANCES.—The transfer of assets and unexpended balances pursuant to paragraph (1) shall not include the funds appropriated under the heading ''BIODEFENSE COUNTERMEASURES'' in the Department of Homeland Security Appropriations Act, 2004 (Public law 108-90).

(3) CONFORMING AMENDMENT.—Section 503 of the Homeland Security Act of 2002 (6 U.S.C. 313) is amended by striking paragraph (6).

SEC. 4. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

(a) IN GENERAL.—Section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3) is amended to read as follows:

''SEC. 564. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

''(a) IN GENERAL.—

''(1) EMERGENCY USES.—Notwithstanding sections 505, 510(k), and 515 of this Act and section 351 of the Public Health Service Act, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an 'emergency use').

''(2) APPROVAL STATUS OF PRODUCT.—An authorization under paragraph (1) may authorize an emergency use of a product that—

''(A) is not approved, licensed, or cleared for commercial distribution under a provision of law referred to in such paragraph (referred to in this section as an 'unapproved product'); or

''(B) is approved, licensed, or cleared under such a provision, but which use is not under such provision an approved, licensed, or cleared use of the product (referred to in this section as an 'unapproved use of an approved product').

''(3) RELATION TO OTHER USES.—An emergency use authorized under paragraph (1) for a product is in addition to any other use that is authorized for the product under a provision of law referred to in such paragraph.

''(4) DEFINITIONS.—For purposes of this section:

''(A) The term 'biological product' has the meaning given such term in section 351 of the Public Health Service Act.

''(B) The term 'emergency use' has the meaning indicated for such term in paragraph (1).

''(C) The term 'product' means a drug, device, or biological product.

''(D) The term 'unapproved product' has the meaning indicated for such term in paragraph (2)(A).

''(E) The term 'unapproved use of an approved product' has the meaning indicated for such term in paragraph (2)(B).

''(b) DECLARATION OF EMERGENCY.—

''(1) IN GENERAL.—The Secretary may declare an emergency justifying the authorization under this subsection for a product on the basis of—

''(A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

''(B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or

''(C) a determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.

''(2) TERMINATION OF DECLARATION.—

''(A) IN GENERAL.—A declaration under this subsection shall terminate upon the earlier of—

''(i) a determination by the Secretary, in consultation as appropriate with the Secretary of Homeland Security or the Secretary of Defense, that the circumstances described in paragraph (1) have ceased to exist; or

''(ii) the expiration of the one-year period beginning on the date on which the declaration is made.

''(B) RENEWAL.—Notwithstanding subparagraph (A), the Secretary may renew a declaration under this subsection, and this paragraph shall apply to any such renewal.

''(C) DISPOSITION OF PRODUCT.—If an authorization under this section with respect to an unapproved product ceases to be effective as a result of a termination under subparagraph (A) of this paragraph, the Secretary shall consult with the manufacturer of such product with respect to the appropriate disposition of the product.

''(3) ADVANCE NOTICE OF TERMINATION.—The Secretary shall provide advance notice that a declaration under this subsection will be terminated. The period of advance notice shall be a period reasonably determined to provide—

''(A) in the case of an unapproved product, a sufficient period for disposition of the product, including the return of such product (except such quantities of product as are necessary to provide for continued use consistent with subsection (f)(2)) to the manufacturer (in the case of a manufacturer that chooses to have such product returned); and

''(B) in the case of an unapproved use of an approved product, a sufficient period for the disposition of any labeling, or any information under subsection (e)(2)(B)(ii), as the case may be, that was provided with respect to the emergency use involved.

''(4) PUBLICATION.—The Secretary shall promptly publish in the Federal Register each declaration, determination, advance notice of termination, and renewal under this subsection.

''(c) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—The Secretary may issue an authorization under this section with respect to the emergency use of a product only if, after consultation with the Director of the National Institutes of Health and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the circumstances of the emergency involved), the Secretary concludes—

''(1) that an agent specified in a declaration under subsection (b) can cause a serious or life-threatening disease or condition;

''(2) that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that—

''(A) the product may be effective in diagnosing, treating, or preventing—

''(i) such disease or condition; or

''(ii) a serious or life-threatening disease or condition caused by a product authorized under this section, approved or cleared under this Act, or licensed under section 351 of the Public Health Service Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and

''(B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product;

''(3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and

''(4) that such other criteria as the Secretary may by regulation prescribe are satisfied.

''(d) SCOPE OF AUTHORIZATION.—An authorization of a product under this section shall state—

''(1) each disease or condition that the product may be used to diagnose, prevent, or treat within the scope of the authorization;

''(2) the Secretary's conclusions, made under subsection (c)(2)(B), that the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product; and

''(3) the Secretary's conclusions, made under subsection (c), concerning the safety and potential effectiveness of the product in diagnosing, preventing, or treating such diseases or conditions, including an assessment of the available scientific evidence.

''(e) CONDITIONS OF AUTHORIZATION.—

''(1) UNAPPROVED PRODUCT.—

''(A) REQUIRED CONDITIONS.—With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable

given the circumstances of the emergency, shall, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

''(i) Appropriate conditions designed to ensure that health care professionals administering the product are informed—

''(I) that the Secretary has authorized the emergency use of the product;

''(II) of the significant known and potential benefits and risks of the emergency use of the product, and of the extent to which such benefits and risks are unknown; and

''(III) of the alternatives to the product that are available, and of their benefits and risks.

''(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

''(I) that the Secretary has authorized the emergency use of the product;

''(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

''(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

''(iii) Appropriate conditions for the monitoring and reporting of adverse events associated with the emergency use of the product.

''(iv) For manufacturers of the product, appropriate conditions concerning recordkeeping and reporting, including records access by the Secretary, with respect to the emergency use of the product.

''(B) AUTHORITY FOR ADDITIONAL CONDITIONS.—With respect to the emergency use of an unapproved product, the Secretary may, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

''(i) Appropriate conditions on which entities may distribute the product with respect to the emergency use of the product (including limitation to distribution by government entities), and on how distribution is to be performed.

''(ii) Appropriate conditions on who may administer the product with respect to the emergency use of the product, and on the categories of individuals to whom, and the circumstances under which, the product may be administered with respect to such use.

''(iii) Appropriate conditions with respect to the collection and analysis of information, during the period when the authorization is in effect, concerning the safety and effectiveness of the product with respect to the emergency use of such product.

''(iv) For persons other than manufacturers of the product, appropriate conditions concerning recordkeeping and reporting, including records access by the Secretary, with respect to the emergency use of the product.

''(2) UNAPPROVED USE.—With respect to the emergency use of a product that is an unapproved use of an approved product:

''(A) For a manufacturer of the product who carries out any activity for which the authorization is issued, the Secretary shall, to the extent practicable given the circumstances of the emergency, establish conditions described in clauses (i) and (ii) of paragraph (1)(A), and may establish conditions described in clauses (iii) and (iv) of such paragraph.

''(B)(i) If the authorization under this section regarding the emergency use authorizes a change in the labeling of the product, but the manufacturer of the product chooses not to make such change, such authorization may not authorize distributors of the product or any other person to alter or obscure the labeling provided by the manufacturer.

''(ii) In the circumstances described in clause (i), for a person who does not manufacture the product and who chooses to act under this clause, an authorization under this section regarding the emergency use shall, to the extent practicable given the circumstances of the emergency, authorize such person to provide appropriate information with respect to such product in addition to the labeling provided by the manufacturer, subject to compliance with clause (i). While the authorization under this section is effective, such additional information shall not be considered labeling for purposes of section 502.

''(C) The Secretary may establish with respect to the distribution and administration of the product for the unapproved use conditions no more restrictive than those established by the Secretary with respect to the distribution and administration of the product for the approved use.

''(3) GOOD MANUFACTURING PRACTICE.—With respect to the emergency use of a product for which an authorization under this section is issued (whether an unapproved product or an unapproved use of an approved product), the Secretary may waive or limit, to the extent appropriate given the circumstances of the emergency, requirements regarding current good manufacturing practice otherwise applicable to the manufacture, processing, packing, or holding of products subject to regulation under this Act, including such requirements established under section 501.

''(4) ADVERTISING.—The Secretary may establish conditions on advertisements and other promotional descriptive printed matter that relate to the emergency use of a product for which an authorization under this section is issued (whether an unapproved product or an unapproved use of an approved product), including, as appropriate—

''(A) with respect to drugs and biological products, requirements applicable to prescription drugs pursuant to section 502(n); or

''(B) with respect to devices, requirements applicable to restricted devices pursuant to section 502(r).

''(f) DURATION OF AUTHORIZATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an authorization under this section shall be effective until the earlier of the termination of the declaration under subsection (b) or a revocation under subsection (g).

''(2) CONTINUED USE AFTER END OF EFFECTIVE PERIOD.—Notwithstanding the termination of the declaration under subsection (b) or a revocation under subsection (g), an authorization shall continue to be effective to provide for continued use of an unapproved product with respect to a patient to whom it was administered during the period described by paragraph (1), to the extent found necessary by such patient's attending physician.

''(g) REVOCATION OF AUTHORIZATION.—

''(1) REVIEW.—The Secretary shall periodically review the circumstances and the appropriateness of an authorization under this section.

''(2) REVOCATION.—The Secretary may revoke an authorization under this section if the criteria under subsection (c) for issuance of such authorization are no longer met or other circumstances make such revocation appropriate to protect the public health or safety.

''(h) PUBLICATION; CONFIDENTIAL INFORMATION.—

''(1) PUBLICATION.—The Secretary shall promptly publish in the Federal Register a notice of each authorization, and each termination or revocation of an authorization under this section, and an explanation of the reasons therefor (which may include a summary of data or information that has been submitted to the Secretary in an application under section 505(i) or section 520(g), even if such summary may indirectly reveal the existence of such application).

''(2) CONFIDENTIAL INFORMATION.—Nothing in this section alters or amends section 1905 of title 18, United States Code, or section 552(b)(4) of title 5 of such Code.

''(i) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions under the authority of this section by the Secretary, by the Secretary of Defense, or by the Secretary of Homeland Security are committed to agency discretion.

''(j) RULES OF CONSTRUCTION.—The following applies with respect to this section:

''(1) Nothing in this section impairs the authority of the President as Commander in Chief of the Armed Forces of the United States under article II, section 2 of the United States Constitution.

''(2) Nothing in this section impairs the authority of the Secretary of Defense with respect to the Department of Defense, including the armed forces, under other provisions of Federal law.

''(3) Nothing in this section (including any exercise of authority by a manufacturer under subsection (e)(2)) impairs the authority of the United States to use or manage quantities of a product that are owned or controlled by the United States (including quantities in the stockpile maintained under section 319F–2 of the Public Health Service Act).

''(k) RELATION TO OTHER PROVISIONS.—If a product is the subject of an authorization under this section, the use of such product within the scope of the authorization shall not be considered to constitute a clinical investigation for purposes of section 505(i), section 520(g), or any other provision of this Act or section 351 of the Public Health Service Act.

''(l) OPTION TO CARRY OUT AUTHORIZED ACTIVITIES.—Nothing in this section provides the Secretary any authority to require any person to carry out any activity that becomes lawful pursuant to an authorization under this section, and no person is required to inform the Secretary that the person will not be carrying out such activity, except that a manufacturer of a sole-source unapproved product authorized for emergency use shall report to the Secretary within a reasonable period of time after the issuance by the Secretary of such authorization if such manufacturer does not intend to carry out any activity under the authorization. This section only has legal effect on a person who carries out an activity for which an authorization under this section is issued. This section does not modify or affect activities carried out pursuant to other provisions of this Act or section 351 of the Public Health Service Act. Nothing in this subsection may be construed as restricting the Secretary from imposing conditions on persons who carry out any activity pursuant to an authorization under this section.''.

(b) REPEAL OF TERMINATION PROVISION.—Subsection (d) of section 1603 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 1107a note) is repealed.

SEC. 5. REPORTS REGARDING AUTHORITIES UNDER THIS ACT.

(a) SECRETARY OF HEALTH AND HUMAN SERVICES.—

(1) ANNUAL REPORTS ON PARTICULAR EXERCISES OF AUTHORITY.—

(A) RELEVANT AUTHORITIES.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall submit reports in accordance with subparagraph (B) regarding the exercise of authority under the following provisions of law:

(i) With respect to section 319F–1 of the Public Health Service Act (as added by section 2 of this Act):

(I) Subsection (b)(1) (relating to increased simplified acquisition threshold).

(II) Subsection (b)(2) (relating to procedures other than full and open competition).

(III) Subsection (c) (relating to expedited peer review procedures).

(ii) With respect to section 319F–2 of the Public Health Service Act (as added by section 3 of this Act):

(I) Subsection (c)(7)(C)(iii) (relating to simplified acquisition procedures).

(II) Subsection (c)(7)(C)(iv) (relating to procedures other than full and open competition).

(III) Subsection (c)(7)(C)(v) (relating to premium provision in multiple-award contracts).

(iii) With respect to section 564 of the Federal Food, Drug, and Cosmetic Act (as added by section 4 of this Act):

(I) Subsection (a)(1) (relating to emergency uses of certain drugs and devices).

(II) Subsection (b)(1) (relating to a declaration of an emergency).

(III) Subsection (e) (relating to conditions on authorization).

(B) CONTENTS OF REPORTS.—The Secretary shall annually submit to the designated congressional committees a report that summarizes—

(i) the particular actions that were taken under the authorities specified in subparagraph (A), including, as applicable, the identification of the threat agent, emergency, or the biomedical countermeasure with respect to which the authority was used;

(ii) the reasons underlying the decision to use such authorities, including, as applicable, the options that were considered and rejected with respect to the use of such authorities;

(iii) the number of, nature of, and other information concerning the persons and entities that received a grant, cooperative agreement, or contract pursuant to the use of such authorities, and the persons and entities that were considered and rejected for such a grant, cooperative agreement, or contract, except that the report need not disclose the identity of any such person or entity; and

(iv) whether, with respect to each procurement that is approved by the President under section 319F–2(c)(6) of the Public Health Service Act (as added by section 3 of this Act), a contract was entered into within one year after such approval by the President.

(2) ANNUAL SUMMARIES REGARDING CERTAIN ACTIVITY.—The Secretary shall annually submit to the designated congressional committees a report that summarizes the activity undertaken pursuant to the following authorities under section 319F–1 of the Public Health Service Act (as added by section 2 of this Act):

(A) Subsection (b)(3) (relating to increased micropurchase threshold).

(B) Subsection (d) (relating to authority for personal services contracts).

(C) Subsection (e) (relating to streamlined personnel authority).

With respect to subparagraph (B), the report shall include a provision specifying, for the one-year period for which the report is submitted, the number of persons who were paid amounts greater than $100,000 and the number of persons who were paid amounts between $50,000 and $100,000.

(3) REPORT ON ADDITIONAL BARRIERS TO PROCUREMENT OF SECURITY COUNTERMEASURES.—Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security, shall report to the designated congressional committees any potential barriers to the procurement of security countermeasures that have not been addressed by this Act.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—

(1) IN GENERAL.—Four years after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a study—

(A)(i) to review the Secretary of Health and Human Services' utilization of the authorities granted under this Act with respect to simplified acquisition procedures, procedures other than full and open competition, increased micropurchase thresholds, personal services contracts, streamlined personnel authority, and the purchase of security countermeasures under the special reserve fund; and

(ii) to make recommendations to improve the utilization or effectiveness of such authorities in the future;

(B)(i) to review and assess the adequacy of the internal controls instituted by such Secretary with respect to such authorities, where required by this Act; and

(ii) to make recommendations to improve the effectiveness of such controls;

(C)(i) to review such Secretary's utilization of the authority granted under this Act to authorize an emergency use of a biomedical countermeasure, including the means by which the Secretary determines whether and under what conditions any such authorizations should be granted and the benefits and adverse impacts, if any, resulting from the use of such authority; and

(ii) to make recommendations to improve the utilization or effectiveness of such authority and to enhance protection of the public health;

(D) to identify any purchases or procurements that would not have been made or would have been significantly delayed except for the authorities described in subparagraph (A)(i); and

(E)(i) to determine whether and to what extent activities undertaken pursuant to the biomedical countermeasure research and development authorities established in this Act have enhanced the development of biomedical countermeasures affecting national security; and

(ii) to make recommendations to improve the ability of the Secretary to carry out these activities in the future.

(2) ADDITIONAL PROVISIONS REGARDING DETERMINATION ON DEVELOPMENT OF BIOMEDICAL COUNTERMEASURES AFFECTING NATIONAL SECURITY.—In the report under paragraph (1), the determination under subparagraph (E) of such paragraph shall include—

(A) the Comptroller General's assessment of the current availability of countermeasures to address threats identified by the Secretary of Homeland Security;

(B) the Comptroller General's assessment of the extent to which programs and activities under this Act will reduce any gap between the threat and the availability of countermeasures to an acceptable level of risk; and

(C)(i) the Comptroller General's assessment of threats to national security that are posed by technology that will enable, during the 10-year period beginning on the date of the enactment of this Act, the development of antibiotic resistant, mutated, or bioengineered strains of biological agents; and

(ii) recommendations on short-term and long-term governmental strategies for addressing such threats, including recommendations for Federal policies regarding research priorities, the development of countermeasures, and investments in technology.

(3) REPORT.—A report providing the results of the study under paragraph (1) shall be submitted to the designated congressional committees not later than five years after the date of the enactment of this Act.

(c) REPORT REGARDING BIOCONTAINMENT FACILITIES.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Health and Human Services shall jointly report to the designated congressional committees whether there is a lack of adequate large-scale biocontainment facilities necessary for the testing of security countermeasures in accordance with Food and Drug Administration requirements.

(d) DESIGNATED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term ''designated congressional committees'' means the following committees of the Congress:

(1) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(2) In the Senate: the appropriate committees.

SEC. 6. OUTREACH.

The Secretary of Health and Human Services shall develop outreach measures to ensure to the extent practicable that diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Black or African Americans, American Indians, Appalachian Americans, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, Hispanics or Latinos, or other underrepresented populations, are meaningfully aware of available research and development grants, contracts, cooperative agreements, and procurements conducted under sections 2 and 3 of this Act.

SEC. 7. RECOMMENDATION FOR EXPORT CONTROLS ON CERTAIN BIOMEDICAL COUNTERMEASURES.

Upon the award of any grant, contract, or cooperative agreement under section 2 or 3 of this Act for the research, development, or procurement of a qualified countermeasure or a security countermeasure (as those terms are defined in this Act), the Secretary of Health and Human Services shall, in consultation with the heads of other appropriate Federal agencies, determine whether the countermeasure involved in such grant, contract, or cooperative agreement is subject to existing export-related controls and, if not, may make a recommendation to the appropriate Federal agency or agencies that such countermeasure should be included on the list of controlled items subject to such controls.

SEC. 8. ENSURING COORDINATION, COOPERATION AND THE ELIMINATION OF UNNECESSARY DUPLICATION IN PROGRAMS DESIGNED TO PROTECT THE HOMELAND FROM BIOLOGICAL, CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS.

(a) ENSURING COORDINATION OF PROGRAMS.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall ensure that the activities of their respective Departments coordinate, complement, and do not unnecessarily duplicate programs to identify potential domestic threats from biological, chemical, radiological or nuclear agents, detect domestic incidents involving such agents, analyze such incidents, and develop necessary countermeasures. The aforementioned Secretaries shall further ensure that information and technology possessed

by the Departments relevant to these activities are shared with the other Departments.

(b) DESIGNATION OF AGENCY COORDINATION OFFICER.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall each designate an officer or employee of their respective Departments who shall coordinate, through regular meetings and communications, with the other aforementioned Departments such programs and activities carried out by their Departments.

SEC. 9. AUTHORITY OF THE SECRETARY OF HEALTH AND HUMAN SERVICES DURING NATIONAL EMERGENCIES.

Section 1135(b) of the Social Security Act (42 U.S.C. 1320b–5(b)) is amended—

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

''(3) actions under section 1867 (relating to examination and treatment for emergency medical conditions and women in labor) for—

''(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

''(B) the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period and inserting ''; and'';

(4) by inserting after paragraph (6), the following:

''(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)—

''(A) section 164.510 of title 45, Code of Federal Regulations, relating to—

''(i) requirements to obtain a patient's agreement to speak with family members or friends; and

''(ii) the requirement to honor a request to opt out of the facility directory;

''(B) section 164.520 of such title, relating to the requirement to distribute a notice; or

''(C) section 164.522 of such title, relating to—

''(i) the patient's right to request privacy restrictions; and

''(ii) the patient's right to request confidential communications.''; and

(5) by adding at the end the following: ''A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.''.

SA 3179. Mr. LOTT (for himself and Mr. COCHRAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, between lines 14 and 15, insert the following:

SEC. 217. ADVANCED FERRITE ANTENNA.

(a) AMOUNT FOR DEVELOPMENT AND TESTING.—Of the amount authorized to be appropriated under section 201(2), $3,000,000 shall be available for development and testing of the Advanced Ferrite Antenna.

(b) ADJUSTMENTS TO AUTHORIZATIONS OF APPROPRIATIONS.—(1) The amount authorized to be appropriated under section 201(2) is hereby increased by $3,000,000.

(2) The amount authorized to be appropriated under section 102(a)(3) is hereby reduced by $3,000,000, to be derived from the amounts for the LCU(X) program.

SA 3180. Mr. GREGG (for himself and Mr. KENNEDY) proposed an amendment to the bill S. 15, to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures; as follows:

Amend the title so as to read: To amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.''.

SA 3181. Ms. CANTWELL (for herself, Mr. HOLLINGS, Mrs. MURRAY, Mrs. CLINTON, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 384, strike line 3 and all that follows through page 391, line 7, and insert the following:

SEC. 3117. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

(a) ANNUAL REPORT REQUIRED.—Subtitle C of title XLVII of the Atomic Energy Defense Act (50 U.S.C. 2771 et seq.) is amended by adding at the end the following new section:

''SEC. 4732. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

''The Secretary of Energy shall submit to Congress each year, in the budget justification materials submitted to Congress in support of the budget of the President for the fiscal year beginning in such year (as submitted under section 1105(a) of title 31, United States Code), the following:

''(1) A detailed description and accounting of the proposed obligations and expenditures by the Department of Energy for safeguards and security in carrying out programs necessary for the national security for the fiscal year covered by such budget, including any technologies on safeguards and security proposed to be deployed or implemented during such fiscal year.

''(2) With respect to the fiscal year ending in the year before the year in which such budget is submitted, a detailed description and accounting of—

''(A) the policy on safeguards and security, including any modifications in such policy adopted or implemented during such fiscal year;

''(B) any initiatives on safeguards and security in effect or implemented during such fiscal year;

''(C) the amount obligated and expended for safeguards and security during such fiscal year, set forth by total amount, by amount per program, and by amount per facility; and

''(D) the technologies on safeguards and security deployed or implemented during such fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by inserting after the item relating to section 4731 the following new item:

''Sec. 4732. Annual report on expenditures for safeguards and security.''.

SEC. 3118. AUTHORITY TO CONSOLIDATE COUNTERINTELLIGENCE OFFICES OF DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION WITHIN NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORITY.—The Secretary of Energy may consolidate the counterintelligence programs and functions referred to in subsection (b) within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and provide for their discharge by that Office.

(b) COVERED PROGRAMS AND FUNCTIONS.—The programs and functions referred to in this subsection are as follows:

(1) The functions and programs of the Office of Counterintelligence of the Department of Energy under section 215 of the Department of Energy Organization Act (42 U.S.C. 7144b).

(2) The functions and programs of the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration under section 3232 of the National Nuclear Security Administration Act (50 U.S.C. 2422), including the counterintelligence programs under section 3233 of that Act (50 U.S.C. 2423).

(c) ESTABLISHMENT OF POLICY.—The Secretary shall have the responsibility to establish policy for the discharge of the counterintelligence programs and functions consolidated within the National Nuclear Security Administration under subsection (a) as provided for under section 213 of the Department of Energy Organization Act (42 U.S.C. 7144).

(d) PRESERVATION OF COUNTERINTELLIGENCE CAPABILITY.—In consolidating counterintelligence programs and functions within the National Nuclear Security Administration under subsection (a), the Secretary shall ensure that the counterintelligence capabilities of the Department of Energy and the National Nuclear Security Administration are in no way degraded or compromised.

(e) REPORT ON EXERCISE OF AUTHORITY.—In the event the Secretary exercises the authority in subsection (a), the Secretary shall submit to the congressional defense committees a report on the exercise of the authority. The report shall include—

(1) a description of the manner in which the counterintelligence programs and functions referred to in subsection (b) shall be consolidated within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and discharged by that Office;

(2) a notice of the date on which that Office shall commence the discharge of such programs and functions, as so consolidated; and

(3) a proposal for such legislative action as the Secretary considers appropriate to effectuate the discharge of such programs and functions, as so consolidated, by that Office.

(f) DEADLINE FOR EXERCISE OF AUTHORITY.—The authority in subsection (a) may be exercised, if at all, not later than one year after the date of the enactment of this Act.

SEC. 3119. ON-SITE TREATMENT AND STORAGE OF WASTES FROM REPROCESSING ACTIVITIES AND RELATED WASTE.

(a) AUTHORITY.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

SA 3182. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3170 submitted by Mr. GRAHAM of South Carolina and intended to be proposed to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike line 11.

SA 3183. Mr. SMITH (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill insert the following:

TITLE ____—LOCAL LAW ENFORCEMENT ENHANCEMENT ACT.

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Local Law Enforcement Enhancement Act of 2004''.

SEC. ___02. FINDINGS.

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) The prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including—

(A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and

(B) by preventing members of targeted groups from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(7) Perpetrators cross State lines to commit such violence.

(8) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(9) Such violence is committed using articles that have traveled in interstate commerce.

(10) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(11) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct ''races''. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(12) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(13) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States and local jurisdictions.

SEC. ___03. DEFINITION OF HATE CRIME.

In this title, the term ''hate crime'' has the same meaning as in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note).

SEC. ___04. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.

(a) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—At the request of a law enforcement official of a State or Indian tribe, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that—

(A) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(B) constitutes a felony under the laws of the State or Indian tribe; and

(C) is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim, or is a violation of the hate crime laws of the State or Indian tribe.

(2) PRIORITY.—In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than 1 State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) GRANTS.—

(1) IN GENERAL.—The Attorney General may award grants to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS.—In implementing the grant program, the Office of Justice Programs shall work closely with the funded jurisdictions to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION.—

(A) IN GENERAL.—Each State that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION.—Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS.—A State or political subdivision of a State or tribal official applying for assistance under this subsection shall—

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, political subdivision, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, political subdivision, or tribal official has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single jurisdiction within a 1 year period.

(6) REPORT.—Not later than December 31, 2005, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to

carry out this subsection $5,000,000 for each of fiscal years 2005 and 2006.

SEC. ___05. GRANT PROGRAM.

(a) AUTHORITY TO MAKE GRANTS.—The Office of Justice Programs of the Department of Justice shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. ___06. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE AND LOCAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Community Relations Service, for fiscal years 2005, 2006, and 2007 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section ___07.

SEC. ___07. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

"§ 249. Hate crime acts

''(a) IN GENERAL.—

''(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

''(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(i) death results from the offense; or

''(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(I) death results from the offense; or

''(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

''(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

''(I) across a State line or national border; or

''(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

''(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

''(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

''(iv) the conduct described in subparagraph (A)—

''(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

''(II) otherwise affects interstate or foreign commerce.

''(b) CERTIFICATION REQUIREMENT.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

''(1) he or she has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

''(2) he or his designee or she or her designee has consulted with State or local law enforcement officials regarding the prosecution and determined that—

''(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

''(B) the State has requested that the Federal Government assume jurisdiction;

''(C) the State does not object to the Federal Government assuming jurisdiction; or

''(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

''(c) DEFINITIONS.—In this section—

''(1) the term 'explosive or incendiary device' has the meaning given the term in section 232 of this title; and

''(2) the term 'firearm' has the meaning given the term in section 921(a) of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

''249. Hate crime acts.''.

SEC. ___08. DUTIES OF FEDERAL SENTENCING COMMISSION.

(a) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—Pursuant to the authority provided under section 994 of title 28, United States Code, the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements (in addition to the sentencing enhancement provided for the use of a minor during the commission of an offense) for adult defendants who recruit juveniles to assist in the commission of hate crimes.

(b) CONSISTENCY WITH OTHER GUIDELINES.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishments for substantially the same offense.

SEC. ___09. STATISTICS.

Subsection (b)(1) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting ''gender,'' after ''race,''.

SEC. ___10. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SA 3184. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At end of subtitle B of title I, add the following:

SEC. 113. INTEGRATION OF JAVELIN ANTI-ARMOR MISSILE SYSTEM INTO ENGAGEMENT SKILLS TRAINER 2000.

The amount authorized to be appropriated by section 101(5) for other procurement for the Army is hereby increased by $3,000,000, with the amount of the increase to be allocated to the integration of the JAVELIN anti-armor missile system into the Engagement Skills Trainer 2000 in order to allow soldiers in infantry rifle platoons to train will all their organic weapons.

SA 3185. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. NAVAL PROFESSIONAL MILITARY EDUCATION.

The amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy is hereby increased by $4,000,000, with the amount of the increase to be allocated to Naval Professional Military Education (NPME).

SA 3186. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. ADVANCED DIGITAL RADAR SYSTEM.

The amount authorized to be appropriated by section 201(1) for research, development,

test, and evaluation, Army, is hereby increased by $3,000,000, with the amount of the increase to be made available for initial development of the Advanced Digital Radar System (ADRS) (PE 0605602A).

SA 3187. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. DEPLOYMENT AND EXPANSION OF CIVIL SUPPORT TEAM TRAINER PROGRAM.

The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby increased by $5,000,000, with the amount of the increase to be allocated to deploy and expand the scenarios in the Civil Support Team Trainer (CSTT) program, a simulations based training program for the National Guard Weapons of Mass Destruction Civil Support Teams (WMD–CSTs).

SA 3188. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. ROTARY WING NIGHT VISION GOGGLE TRAINING.

The amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy is hereby increased by $4,000,000, with the amount of the increase to be allocated to the development of rotary wing night vision goggle (NVG) training.

SA 3189. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. RAPID RESPONSE NETWORKING FOR MULTIPLE APPLICATIONS.

The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $1,500,000, with the amount of the increase to be allocated to the Defense Threat Reducation Agency and made available to the University of North Florida for the purpose of permitting the University to continue its ongoing research on Rapid Response networking for Multiple Applications.

SA 3190. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 131, between lines 17 and 18, insert the following:

SEC. 653. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–2009dd–7) is amended by inserting after section 331F the following:

"SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

''(a) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is hereby rescinded.

''(b) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is hereby deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

''(c) MOBILIZED MILITARY RESERVIST.—In this section, the term 'mobilized military reservist' means an individual who—

''(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

''(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.''.

SA 3191. Mr. KYL (for himself and Mr. CORNYN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of the amendment, insert the following:

SEC. 858. SENSE OF THE SENATE REGARDING EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

It is the sense of the Senate that Congress should, as soon as practicable, enact the following legislation:

SEC. ___. EXCISE TAXES ON EXCESS FEE TRANSACTIONS OF CERTAIN ATTORNEYS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (relating to failure by certain charitable organizations to meet certain qualification requirements) is amended by adding at the end the following new section:

"SEC. 4959. TAXES ON EXCESS FEE TRANSACTIONS.

''(a) INITIAL TAXES.—

''(1) IN GENERAL.—There is hereby imposed on the collecting attorney in each excess fee transaction a tax equal to 5 percent of the excess fee.

''(2) PAYMENT.—The tax imposed by paragraph (1) shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(b) ADDITIONAL TAX ON THE COLLECTING ATTORNEY.—

''(1) IN GENERAL.—In any case in which a tax is imposed by subsection (a) on an excess fee transaction and the excess fee involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess fee involved.

''(2) PAYMENT.—The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

''(c) EXCESS FEE TRANSACTION; EXCESS FEE.—For purposes of this section—

''(1) EXCESS FEE TRANSACTION.—

''(A) IN GENERAL.—The term 'excess fee transaction' means any transaction in which a fee is provided by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff if the amount of the fee provided exceeds the value of the services received in exchange therefor or subsection (g)(1) applies.

''(B) DETERMINATION OF VALUE.—For purposes of subparagraph (A), in determining whether the amount of the fee provided exceeds the value of the services received in exchange therefor, the value of the services shall be the sum of—

''(i) the reasonable expenses incurred by the collecting attorney in the course of the representation of the applicable plaintiff, and

''(ii) a reasonable fee based on—

''(I) the number of hours of non-duplicative, professional quality legal work provided by the collecting attorney of material value to the outcome of the representation of the applicable plaintiff, taking into account the factors described in subparagraphs (B) and (D) of subsection (h)(2),

''(II) reasonable hourly rates for the individuals performing such work based on hourly rates charged by other attorneys for the rendition of comparable services, including rates charged by adversary defense counsel in the representation, taking into account the factors described in subparagraphs (A), (C), (E), and (G) of subsection (h)(2), and

''(III) to the extent such items are not taken into account in establishing the reasonable hourly rates under subclause (II), an appropriate adjustment rate determined in accordance with subparagraph (C) to compensate the collecting attorney for periods of

substantial risk of non-payment of fees and for skillful or innovative services which increase the amount of the applicable plaintiff's recovery.

''(iii) FEES IN CERTAIN SETTLEMENTS.—For purposes of this subparagraph, the value of services for any collecting attorney receiving fees under the Master Settlement Agreement shall be deemed to include a reasonable fee that is based on a reasonable hourly rate (including appropriate adjustment rates) of not less than $20,000 per hour

''(C) ADJUSTMENT RATE.—

''(i) IN GENERAL.—For purposes of this paragraph, an appropriate adjustment rate is a percentage of the reasonable hourly rate under subparagraph (B)(ii)(II) which is added to the amount of such rate and which is not more than the sum of one risk percentage and one skill percentage described in clauses (ii) and (iii), respectively.

''(ii) RISK PERCENTAGE.—For purposes of this subparagraph, the term 'risk percentage' means a percentage rate that is proportional to the collecting attorney's risk of nonrecovery of fees and which is—

''(I) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees, not more than 100 percent,

''(II) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 8,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 2 years to the case before resolution of all claims, not more than 200 percent, or

''(III) in the case of a collecting attorney who assumed a substantial risk of nonpayment of fees and devoted more than 15,000 hours of legal work (as described in subparagraph (B)(ii)(I)) and more than 4 years to the case before resolution of all claims, not more than 300 percent.

''(iii) SKILL PERCENTAGE.—For purposes of this subparagraph, the term 'skill percentage' means, in the case of a collecting attorney who has demonstrated exceptionally skillful or innovative legal service which generated a recovery for the applicable plaintiff substantially greater than the typical recovery in similar cases, a percentage rate that is proportional to the increase in the applicable plaintiff's recovery and that is not more than 100 percent.

''(iv) LIMITATION.—An appropriate adjustment rate shall not increase the collecting attorney's fee above an amount that is proportional to the applicable plaintiff's recovery.

''(D) COURT APPROVAL OF FEES.—Fee payments approved by any court shall be presumed to not be in excess of the value of the services received in exchange therefor if the court approving the fee—

''(i) did not approve an adjustment rate greater than that determined to be appropriate under subparagraph (C) in a case where such fee included an adjustment rate, and

''(ii) obtained and relied upon a report of a legal auditing firm with respect to such fee in accordance with the procedures in paragraph (12).

''(2) EXCESS FEE.—The term 'excess fee' means the excess referred to in paragraph (1)(A).

''(d) JOINT AND SEVERAL LIABILITY.—For purposes of this section, if more than 1 person is liable for any tax imposed by subsection (a), all such persons shall be jointly and severally liable for such tax.

''(e) APPLICABLE PLAINTIFF.—For purposes of this section, the term 'applicable plaintiff' means any person represented by a collecting attorney with respect to a claim described in subsection (f)(1).

''(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

''(1) COLLECTING ATTORNEY.—The term 'collecting attorney' means any person engaged in the practice of law who represents—

''(A) any governmental entity, including any State, municipality, or political subdivision of a State, or any person acting on such entity's behalf, including pursuant to Federal or State Qui Tam statutes, in a claim for recoupment of payments made or to be made by such entity to or on behalf of any natural person by reason, directly or indirectly, of a breach of duty that causes damage to such natural person,

''(B) any organization described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), in a claim for damages based on a breach of duty, whether civil or criminal, causing damage to such organization,

''(C) any natural person seeking to recover damages in a claim based on breaches of duty, whether civil or criminal, causing damage to such natural person, or

''(D) any assignee or other holder of claims described in subparagraph (A), (B), or (C),

when 1 or more of such claims, whether or not joined in 1 action, involve the same or a coordinated group of plaintiff's attorneys or similarly situated defendants, arise out of the same transaction or set of facts or involve substantially similar liability issues, and result in settlements or judgments aggregating at least $100,000,000.

''(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess fee transaction, the period beginning with the date on which the transaction occurs and ending 90 days after the earliest of—

''(A) the date of the mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), or

''(B) the date on which the tax imposed by subsection (a) is assessed.

''(3) MASTER SETTLEMENT AGREEMENT.—The term 'Master Settlement Agreement' means that certain Master Settlement Agreement of November 23, 1998, and other, concluded Settlement Agreements based on State health care expenditures pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), including lawsuits involving the States of Florida, Minnesota, Mississippi, and Texas.

''(4) CORRECTION.—

''(A) GENERAL RULE.—Any excess fee transaction is corrected by undoing the excess fee to the extent possible and taking any additional measures necessary to place the applicable plaintiff in a financial position not worse than that in which such plaintiff would be if the collecting attorney were dealing under the highest fiduciary standards.

''(B) PAYMENT OF EXCESS FEES.—

''(i) IN GENERAL.—Except as provided in clause (ii), a collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the applicable plaintiff.

''(ii) CERTAIN SETTLEMENTS.—In the case of excess fees arising from or related to the Master Settlement Agreement, the collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the Secretary of the Treasury.

''(C) NO WAIVER OF FEE.—No collecting attorney may avoid imposition of any tax imposed by this section by transferring any portion of the excess fee or refusing to accept any portion of the excess fee.

''(5) LIMITED REASONABLE CAUSE.—For purposes of section 4962(a), an excess fee transaction shall not be treated as an event which was due to reasonable cause if the amount of the fee provided would exceed the value of the services received in exchange therefor determined with the maximum adjustment rate allowed under subsection (c)(1)(C).

''(g) DISCLOSURE REQUIREMENTS.—

''(1) TREATMENT AS EXCESS FEE.—Any fee provided after the date of the enactment of this subsection by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether such fee is paid from the applicable plaintiff's recovery, pursuant to a separately negotiated agreement, or in any other manner), directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff shall be deemed to be an excess fee provided in an excess fee transaction unless the disclosure requirements described in paragraph (2) are met.

''(2) CONTENTS OF STATEMENT.—The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney receives any fees with respect to a claim described in subsection (f)(1), if such collecting attorney—

''(A) includes in the return of tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

''(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff prior to the deadline (including extensions) for filing such return.

''(h) LEGAL AUDITING FIRM.—

''(1) IN GENERAL.—In any case before a Federal district court or a State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing attorney billings and select 1 such legal auditing firm to review the billing records submitted by the collecting attorney, under the same standards the firm would use if it were hired by a private party to review legal bills submitted to the party, for the reasonableness of such attorney's billing patterns and practices. The court shall require the collecting attorney to submit billing records, cost records, and any other information sought by such firm in its review.

''(2) REVIEW BY LEGAL AUDITING FIRM.—In reviewing the billing records and work performed by the collecting attorney, the legal auditing firm shall address all relevant matters, including—

''(A) the hourly rates of the collecting attorney compared with the prevailing market rates for the services rendered by the collecting attorney,

''(B) the number of hours worked by the collecting attorney on the case compared with other cases that the collecting attorney worked on during the same period,

''(C) whether the collecting attorney performed tasks that could have been performed by attorneys with lower billing rates,

''(D) whether the collecting attorney used appropriate billing methodology, including keeping contemporaneous time records and using appropriate billing time increments,

''(E) whether particular tasks were staffed appropriately,

''(F) whether the costs and expenses submitted by the collecting attorney were reasonable,

''(G) whether the collecting attorney exercised billing judgment, and

''(H) any other matters normally addressed by the legal auditing firm when reviewing attorney billings for private clients.

''(3) FILING OF REPORT; RESPONSE; BURDEN OF PROOF.—The court shall set a date for the filing of the report of the legal auditing firm, and allow the collecting attorney or any applicable plaintiff to respond to the report within a reasonable time period. The report shall be presumed correct unless rebutted by the collecting attorney or any applicable plaintiff by clear and convincing evidence.

''(4) FEE FOR LEGAL AUDITING FIRM.—The fee for the report of the legal auditing firm shall be paid from the collecting attorney's

fee award, the applicable plaintiff's recovery, or both in a manner determined by the court.

''(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations to prevent avoidance of the purposes of this section and regulations requiring recordkeeping and information reporting.''.

(2) CONFORMING AND CLERICAL AMENDMENTS.—

(A) Subsections (a), (b), and (c) of section 4963 of the Internal Revenue Code of 1986 are each amended by inserting ''4959,'' after ''4958,''.

(B) Subsection (e) of section 6213 of such Code is amended by inserting ''4959 (relating to excess fee transactions),'' before ''4971''.

(C) Paragraphs (2) and (3) of section 7422(g) of such Code are each amended by inserting ''4959,'' after ''4958,''.

(D) The heading for subchapter D of chapter 42 of such Code is amended to read as follows:

''Subchapter D—Failure by Certain Charitable Organizations and Persons to Meet Certain Qualification Requirements and Fiduciary Standards.''.

(E) The table of subchapters for chapter 42 of such Code is amended by striking the item relating to subchapter D and inserting the following:

''SUBCHAPTER D. Failure by certain charitable organizations and persons to meet certain qualification requirements and fiduciary standards.''.

(F) The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

''Sec. 4959. Taxes on excess fee transactions.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to excess fees paid on or after the date of the enactment of this Act.

(b) DECLATORY JUDGMENTS RELATING TO EXCISE TAXES ON EXCISE FEE TRANSACTIONS OF CERTAIN ATTORNEYS.—

(1) IN GENERAL.—Subchapter B of chapter 76 of the Internal Revenue Code of 1986 (relating to judicial proceedings) is amended by redesignating section 7437 as section 7438 and by inserting after section 7436 the following new section:

''SEC. 7437. DECLARATORY JUDGMENTS RELATING TO TAX ON EXCESS FEE TRANSACTIONS.

''(a) IN GENERAL.—In a case of actual controversy involving—

''(1) a determination by the Secretary or the collecting attorney with respect to the imposition of the excise tax on excess fee transactions on such collecting attorney under section 4959, or

''(2) a failure by the Secretary or the collecting attorney to make such a determination,

upon the filing of an appropriate pleading by an applicable plaintiff, the Tax Court may make a declaration with respect to such determination or failure. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

''(b) DEFERENTIAL REVIEW.—If a collecting attorney's fee has been approved by a court in accordance with section 4959(c)(1)(D) or by the Secretary pursuant to section 4959, the Tax Court shall review the fee only for an abuse of discretion.

''(c) LEGAL AUDITING FIRM.—In any petition for a declaration referred to in subsection (a):

''(1) NO PREVIOUS REPORT.—If a report by a legal auditing firm that meets the requirements of section 4959(h) has not been previously produced and relied on by another court, the Tax Court shall hire such a legal auditing firm and rely on its report pursuant to the procedures in section 4959(h).

''(2) SECOND REPORT.—

''(A) IN GENERAL.—If a report by a legal auditing firm has been approved by a court in accordance with section 4959, the Tax Court shall hire a second legal auditing firm upon the request of the petitioner.

''(B) FEE FOR REPORT.—The Tax Court may direct the petitioner to pay the fee for any report of a legal auditing firm provided pursuant to subparagraph (A).

''(d) TIME FOR BRINGING ACTION.—No proceeding may be initiated under this section by any person until 90 days after such person first notifies the Secretary of the excess fee transaction with respect to which the proceeding relates.

''(e) DEFINITIONS.—For purposes of this section, any term used in this section and also in section 4959 shall have the meaning given such term by section 4959.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 7437 and by inserting the following new items:

''Sec. 7437. Declaratory judgments relating to tax on excess fee transactions.

''Sec. 7438. Cross references.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions filed on or after the date of the enactment of this Act.

(c) USE OF CERTAIN FEES.—Any fees collected by the Secretary of the Treasury pursuant to section 4959(f)(4)(B)(ii) of the Internal Revenue Code of 1986 (as added by subsection (a)), shall be made available to the Secretary of Defense, as provided by appropriation Acts, for making expenditures to address the readiness, force protection, and safety needs arising out of the ongoing global war on terrorism. Such expenditures shall include additional—

(1) up-armored High Mobility Multipurpose Wheeled Vehicles;

(2) add-on ballistic protection for medium and heavy wheeled vehicles;

(3) Interceptor Body Armor, including add-on protection for the shoulder and side body areas;

(4) unmanned aerial vehicles;

(5) ammunition and selected items of high priority (such as vehicles, night vision devices, sensors, and Javelin missiles); and

(6) replacement of equipment lost in combat.

SA 3192. Mr. DOMENICI (for himself, Mrs. FEINSTEIN, Mr. LUGAR, Mr. BIDEN, Mr. ALEXANDER, Mr. BINGAMAN, Mr. REED, Mr. AKAKA, Mr. WARNER, Mr. LEVIN, and Mr. FEINGOLD) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of subtitle C of title XXXI, add the following:

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) PROGRAM AUTHORIZED.—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) PROGRAM ELEMENTS.—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials and radiological materials and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, nongovernmental organizations, and other international entities as the Secretary considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''fissile materials'' means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term ''radiological materials'' includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226 and Strontium-90, Curium-244, Strontium-90, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term ''related equipment'' includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term ''highly-enriched uranium'' means uranium enriched to or above 20 percent in isotope 235.

(5) The term ''low-enriched uranium'' means uranium enriched below 20 percent in isotope 235.

(6) The term ''proliferation-attractive'', in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

SA 3193. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division A, add the following:

TITLE XIII—BENEFITS FOR RESERVES ON EXTENDED TOURS OF ACTIVE DUTY

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Guard and Reserve Enhanced Benefits Act of 2004''.

Subtitle A—Family Assistance Benefits

SEC. 1311. MILITARY FAMILY LEAVE.

(a) GENERAL REQUIREMENTS FOR LEAVE.—

(1) DEFINITIONS.—Section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611) is amended by adding at the end the following:

''(14) ACTIVE DUTY.—The term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(15) QUALIFIED MEMBER.—The term 'qualified member' means a member of the reserve components on active duty for a period of more than 30 days.''.

(2) ENTITLEMENT TO LEAVE.—Section 102(a)(1) of such Act (29 U.S.C. 2612(a)) is amended by adding at the end the following:

''(E) Because the spouse, son, daughter, or parent of the employee is a qualified member.''.

(3) SCHEDULE.—Section 102(b)(1) of such Act (29 U.S.C. 2612(b)(1)) is amended by inserting after the second sentence the following: ''Leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.''.

(4) SUBSTITUTION OF PAID LEAVE.—Section 102(d)(2)(A) of such Act (29 U.S.C. 2612(d)(2)(A)) is amended by striking ''(A), (B), or (C)'' and inserting ''(A), (B), (C), or (E)''.

(5) NOTICE.—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following:

''(3) NOTICE FOR MILITARY FAMILY LEAVE.—In any case in which an employee seeks leave under subsection (a)(1)(E), the employee shall provide such notice as is practicable.''.

(6) CERTIFICATION.—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following:

''(f) CERTIFICATION FOR MILITARY FAMILY LEAVE.—An employer may require that a request for leave under section 102(a)(1)(E) be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe.''.

(b) MILITARY FAMILY LEAVE FOR CIVIL SERVICE EMPLOYEES.—

(1) DEFINITIONS.—Section 6381 of title 5, United States Code, is amended—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code; and

''(8) the term 'qualified member' means a member of the reserve components on active duty for a period of more than 30 days.''.

(2) ENTITLEMENT TO LEAVE.—Section 6382(a) of such title is amended by adding at the end the following:

''(E) Because the spouse, son, daughter, or parent of the employee is a qualified member.''.

(3) SCHEDULE.—Section 6382(b)(1) of such title is amended by inserting after the second sentence the following: ''Leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.''.

(4) SUBSTITUTION OF PAID LEAVE.—Section 6382(d) of such title is amended by striking ''(A), (B), (C), or (D)'' and inserting ''(A), (B), (C), (D), or (E)''.

(5) NOTICE.—Section 6382(e) of such title is amended by adding at the end the following:

''(3) In any case in which an employee seeks leave under subsection (a)(1)(E), the employee shall provide such notice as is practicable.''.

(6) CERTIFICATION.—Section 6383 of such title is amended by adding at the end the following:

''(f) An employing agency may require that a request for leave under section 6382(a)(1)(E) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.''.

SEC. 1312. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''There is'' and inserting ''(a) IN GENERAL.—There is'';

(2) in subsection (a), as so designated, by inserting ''(except section 658T)'' after ''this subchapter''; and

(3) by adding at the end the following:

''(b) CHILD CARE FOR CERTAIN MILITARY DEPENDENTS.—There is authorized to be appropriated to carry out section 658T $200,000,000 for each of fiscal years 2005 through 2009.''.

(b) CHILD CARE ASSISTANCE.—The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by adding at the end the following:

''SEC. 658T. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible spouses to assist the spouses in paying for the cost of child care services provided to dependents by eligible child care providers. In making the grants, the Secretary shall give priority to eligible spouses of qualified members on active duty for a period of more than 6 months.

''(b) DEFINITIONS.—In this section:

''(1) ACTIVE DUTY.—The term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(2) ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.—The term 'active duty for a period of more than 30 days' has the meaning given the term in section 101(d)(2) of title 10, United States Code.

''(3) DEPENDENT.—The term 'dependent' means an individual who is—

''(A) a dependent, as defined in section 401 of title 37, United States Code, except that

such term does not include a person described in paragraph (1) or (3) of subsection (a) of such section; and

''(B) an individual described in subparagraphs (A) and (B) of section 658P(4).

''(4) ELIGIBLE SPOUSE.—The term 'eligible spouse' means a person who—

''(A) is a parent of one or more dependents of a qualified member; and

''(B) has the primary responsibility for the care of one or more such dependents.

''(5) QUALIFIED MEMBER.—The term 'qualified member' means a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days.

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a spouse shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a description of the eligible child care provider who provides the child care services assisted through the grant.

''(d) RULE.—The provisions of this subchapter, other than section 658P and provisions referenced in section 658P, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.''.

(c) CONFORMING AMENDMENTS.—Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''appropriated under this subchapter'' and inserting ''appropriated under section 658B(a)''; and

(B) in paragraph (2), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''; and

(2) in subsection (b)(1), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''.

Subtitle B—Education Benefits

PART I—MONTGOMERY GI BILL BENEFITS

SEC. 1321. BASIC EDUCATIONAL ASSISTANCE FOR MEMBERS OF SELECTED RESERVE SERVING EXTENDED OR RECURRING PERIODS ON ACTIVE DUTY.

(a) ENTITLEMENT.—(1) Subsection (a)(1) of section 3011 of title 38, United States Code, is amended—

(A) in subparagraph (B), by striking ''or'' at the end;

(B) in subparagraph (C), by adding ''or'' at the end; and

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

''(D) after September 11, 2001, while a member of the Selected Reserve—

''(i) serves at least 12 months of continuous active duty in the Armed Forces; or

''(ii) during any 60-month period, serves an aggregate of 24 months of continuous active duty in the Armed Forces;''.

(2) Subsection (d)(3) of such section is amended by striking ''The period of service'' and inserting ''Except in the case of an individual described in subsection (a)(1)(D), the period of service''.

(b) EXCLUSION FROM CONTRIBUTIONS FOR INCREASED ASSISTANCE.—Subsection (e)(1) of such section is amended by inserting ''(other than an individual described in subsection (a)(1)(D)'' after ''Any individual''.

(c) AMOUNT OF ASSISTANCE.—Section 3015(a) of such title is amended by inserting after ''three years'' the following: ''or an individual whose service on active duty on which such entitlement is based is described in clause (i) or (ii) of section 3011(a)(1)(D) of this title''.

SEC. 1322. INCREASE IN AMOUNT OF EDUCATIONAL ASSISTANCE FOR MEMBERS OF SELECTED RESERVE.

(a) INCREASE IN AMOUNTS.—Section 16131(b)(1) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking ''$251'' and inserting ''$400'';

(2) in subparagraph (B), by striking ''$188'' and inserting ''$300''; and

(3) in subparagraph (C), by striking ''$125'' and inserting ''$200''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to monthly rates of educational assistance for months beginning on or after that date.

SEC. 1323. MODIFICATION OF TIME LIMITATION FOR USE OF ENTITLEMENT TO EDUCATIONAL ASSISTANCE OF MEMBERS OF SELECTED RESERVE.

Section 16133(a)(2) of title 10, United States Code, is amended—

(1) by inserting ''that is five years after the date'' after ''on the date''; and

(2) by striking ''first'' and inserting ''later''.

PART II—OTHER EDUCATION BENEFITS

SEC. 1326. STUDENT LOAN DEFERMENTS.

(a) FFEL AND DIRECT SUBSIDIZED LOANS.—Section 428(b)(1)(M) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(1)(M)) is amended—

(1) in clause (ii), by striking ''or'' after the semicolon;

(2) in clause (iii), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iii) the following:

''(iv) during which the borrower is a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and for 3 months following discharge or release from such active duty.''.

(b) CONSOLIDATION LOANS.—Section 428C(b)(4)(C)(ii) of the Higher Education Act of 1965 (20 U.S.C. 1078–3(b)(4)(C)(ii)) is amended—

(1) in subclause (II), by striking ''or'' after the semicolon;

(2) in subclause (III), by striking ''or (II)'' and inserting '', (II) or (III)'';

(3) by redesignating subclause (III) (as so amended) as subclause (IV); and

(4) by inserting after subclause (II) the following:

''(III) by the Secretary, in the case of a consolidation loan of a student who is on an active duty deferment under section 428(b)(1)(M)(iv); or''.

(c) FFEL AND DIRECT UNSUBSIDIZED LOANS.—Section 428H(e)(2) of the Higher Education Act of 1965 (20 U.S.C. 1078–8(e)(2)) is amended by adding at the end the following:

''(C) Notwithstanding subparagraph (A), interest on loans made under this section for which payments of principal are deferred because the student is on an active duty deferment under section 428(b)(1)(M)(iv) shall be paid by the Secretary.''.

(d) PERKINS LOANS.—Section 464(c)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087dd(c)(2)(A)) is amended—

(1) in clause (iii), by striking ''or'' after the semicolon;

(2) in clause (iv), by inserting ''or'' after the semicolon; and

(3) by inserting after clause (iv) the following:

''(v) during which the borrower is a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and for 3 months following discharge or release from such active duty.''.

SEC. 1327. PRESERVATION OF EDUCATIONAL STATUS AND TUITION.

(a) IN GENERAL.—Title VII of the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), as amended by section 1 of Public Law 108–189 (117 Stat. 2835), is further amended by adding at the end the following new section:

''SEC. 707. PRESERVATION OF EDUCATIONAL STATUS AND TUITION.

''(a) LEAVE OF ABSENCE.—A servicemember who is a member of the reserve components on active duty for a period of more than 30 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, and who is enrolled as a student at an institution of higher education at the time of entry into the service on active duty, shall be granted a leave of absence from the institution during the period of the service on active duty and for one year after the conclusion of the service on active duty.

''(b) EDUCATIONAL STATUS.—

''(1) IN GENERAL.—A servicemember on a leave of absence from an institution of higher education under subsection (a) shall be entitled, upon completion of the leave of absence, to be restored to the educational status the servicemember had attained before entering into the service on active duty as described in that subsection without loss of academic credits earned, scholarships or grants awarded, or, subject to paragraph (2), tuition and other fees paid before the entry of the servicemember into the service on active duty.

''(2) TUITION.—

''(A) REFUND.—An institution of higher education shall refund tuition or fees paid or credit the tuition and fees to the next period of enrollment after a servicemember returns from the leave of absence, at the option of the servicemember. Notwithstanding the 180-day limitation referred to in subsection (a)(2)(B) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), a servicemember on a leave of absence under this section shall not be treated as having withdrawn for purposes of such section 484B unless the servicemember fails to return upon the completion of the leave of absence.

''(B) AMOUNT OF REFUND.—If a servicemember requests a refund for a period of enrollment, the percentage of the tuition and fees that shall be refunded shall be equal to 100 percent minus—

''(i) the percentage of the period of enrollment (for which the tuition and fees were paid) that was completed (as determined in accordance with subsection (d) of such section 484B) as of the day the servicemember withdrew, provided that such date occurs on or before the completion of 60 percent of the period of enrollment; or

''(ii) 100 percent, if the day the person withdrew occurs after the servicemember has completed 60 percent of the period of enrollment.''.

(b) CLERICAL AMENDMENT.—The table of contents of that Act is amended by adding at the end the following new item:

''Sec. 707. Preservation of educational status and tuition.''.

Subtitle C—Compensation and Retirement Benefits

SEC. 1331. NONREDUCTION IN PAY FOR FEDERAL EMPLOYEES WHO ARE RESERVES SERVING ON ACTIVE DUTY IN THE UNIFORMED SERVICES FOR EXTENDED PERIODS.

(a) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

"§ 5538. Nonreduction in pay of Reserves on active duty in the uniformed services for extended periods

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services for a period of more than 30 days pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of the service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) In this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay of Reserves on active duty in the uniformed services for extended periods.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as added by this section) beginning on or after the date of enactment of this Act.

SEC. 1332. CREDIT FOR INCOME DIFFERENTIAL FOR EMPLOYMENT OF ACTIVATED MILITARY RESERVIST AND REPLACEMENT PERSONNEL.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

"SEC. 30B. EMPLOYER WAGE CREDIT FOR ACTIVATED MILITARY RESERVISTS.

''(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) in the case of a small business employer, the employment credit with respect to all qualified employees and qualified replacement employees of the taxpayer, plus

''(2) the self-employment credit of a qualified self-employed taxpayer.

''(b) EMPLOYMENT CREDIT.—For purposes of this section—

''(1) QUALIFIED EMPLOYEES.—

''(A) IN GENERAL.—The employment credit with respect to a qualified employee of the taxpayer for any taxable year is equal to the lesser of—

''(i) the excess, if any, of—

''(I) the qualified employee's average daily qualified compensation for the taxable year, over

''(II) the average daily military pay and allowances received by the qualified employee during the taxable year,

while participating in qualified reserve component duty to the exclusion of the qualified employee's normal employment duties for the number of days the qualified employee participates in qualified reserve component duty during the taxable year, including time spent in a travel status, or

''(ii) $6,000.

The employment credit, with respect to all qualified employees, is equal to the sum of the employment credits for each qualified employee under this subsection.

''(B) AVERAGE DAILY QUALIFIED COMPENSATION AND AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—As used with respect to a qualified employee—

''(i) the term 'average daily qualified compensation' means the qualified compensation of the qualified employee for the taxable year divided by the difference between—

''(I) 365, and

''(II) the number of days the qualified employee participates in qualified reserve component duty during the taxable year, including time spent in a travel status, and

''(ii) the term 'average daily military pay and allowances' means—

''(I) the amount paid to the qualified employee during the taxable year as military pay and allowances on account of the qualified employee's participation in qualified reserve component duty, divided by

''(II) the total number of days the qualified employee participates in qualified reserve component duty, including time spent in travel status.

''(C) QUALIFIED COMPENSATION.—When used with respect to the compensation paid or that would have been paid to a qualified employee for any period during which the qualified employee participates in qualified reserve component duty, the term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified employee's presence for work and which would be deductible from the taxpayer's gross income under section 162(a)(1) if the qualified employee were present and receiving such compensation,

''(ii) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and with respect to which the number of days the qualified employee participates in qualified reserve component duty does not result in any reduction in the amount of vacation time, sick leave, or other nonspecific leave previously credited to or earned by the qualified employee, and

''(iii) group health plan costs (if any) with respect to the qualified employee.

''(D) QUALIFIED EMPLOYEE.—The term 'qualified employee' means a person who—

''(i) has been an employee of the taxpayer for the 91-day period immediately preceding the period during which the employee participates in qualified reserve component duty, and

''(ii) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as defined in sections 10142 and 10101 of title 10, United States Code.

''(2) QUALIFIED REPLACEMENT EMPLOYEES.—

''(A) IN GENERAL.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to the lesser of—

''(i) the individual's qualified compensation attributable to service rendered as a qualified replacement employee, or

''(ii) $6,000.

The employment credit, with respect to all qualified replacement employees, is equal to the sum of the employment credits for each qualified replacement employee under this subsection.

''(B) QUALIFIED COMPENSATION.—When used with respect to the compensation paid to a qualified replacement employee, the term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(ii) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(iii) group health plan costs (if any) with respect to the qualified replacement employee.

''(C) QUALIFIED REPLACEMENT EMPLOYEE.—The term 'qualified replacement employee' means an individual who is hired to replace a qualified employee or a qualified self-employed taxpayer, but only with respect to the period during which such employee or taxpayer participates in qualified reserve component duty, including time spent in travel status.

''(c) SELF-EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The self-employment credit of a qualified self-employed taxpayer for any taxable year is equal to the lesser of—

''(A) the excess, if any, of—

''(i) the self-employed taxpayer's average daily self-employment income for the taxable year over

''(ii) the average daily military pay and allowances received by the taxpayer during the taxable year, while participating in qualified reserve component duty to the exclusion of the taxpayer's normal self-employment duties for the number of days the taxpayer participates in qualified reserve component duty during the taxable year, including time spent in a travel status, or

''(B) $6,000.

''(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME AND AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—As used with respect to a self-employed taxpayer—

''(A) the term 'average daily self-employment income' means the self-employment income (as defined in section 1402(b)) of the taxpayer for the taxable year plus the amount paid for insurance which constitutes medical care for the taxpayer for such year (within the meaning of section 162(l)) divided by the difference between—

''(i) 365, and

''(ii) the number of days the taxpayer participates in qualified reserve component duty during the taxable year, including time spent in a travel status, and

''(B) the term 'average daily military pay and allowances' means—

''(i) the amount paid to the taxpayer during the taxable year as military pay and allowances on account of the taxpayer's participation in qualified reserve component duty, divided by

''(ii) the total number of days the taxpayer participates in qualified reserve component duty, including time spent in travel status.

''(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—The term 'qualified self-employed taxpayer' means a taxpayer who—

''(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

''(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States.

''(d) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by this section with respect to such employee.

''(e) LIMITATIONS.—

''(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(B) the tentative minimum tax for the taxable year.

''(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

''(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(B) the 2 succeeding taxable years.

''(3) DISALLOWANCE WITH RESPECT TO PERSONS ORDERED TO ACTIVE DUTY FOR TRAINING.—No credit shall be allowed under subsection (a) to a taxpayer with respect to any period by taking into account any person who is called or ordered to active duty for any of the following types of duty:

''(A) Active duty for training under any provision of title 10, United States Code.

''(B) Training at encampments, maneuvers, outdoor target practice, or other exercises under chapter 5 of title 32, United States Code.

''(C) Full-time National Guard duty, as defined in section 101(d)(5) of title 10, United States Code.

''(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(2) MILITARY PAY AND ALLOWANCES.—The term 'military pay' means pay as that term is defined in section 101(21) of title 37, United States Code, and the term 'allowances' means the allowances payable to a member of the Armed Forces of the United States under chapter 7 of that title.

''(3) QUALIFIED RESERVE COMPONENT DUTY.—The term 'qualified reserve component duty' means active duty performed for a period not less than 180 days under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(4) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e)(1) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.''.

(b) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended—

(1) by inserting ''or compensation'' after ''salaries'', and

(2) by inserting ''30B,'' before ''45A(a)''.

(c) CONFORMING AMENDMENT.—Section 55(c)(2) of the Internal Revenue Code of 1986 is amended by inserting ''30B(e)(1),'' after ''30(b)(3),''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end 30A the following new item:

''Sec. 30B. Employer wage credit for activated military reservists.''.

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

SEC. 1333. REDUCED MINIMUM AGE FOR ELIGIBILITY FOR NON-REGULAR SERVICE RETIRED PAY.

Section 12731(a)(1) of title 10, United States Code, is amended by striking ''60 years of age'' and inserting ''55 years of age''.

Subtitle D—Health Care Benefits

SEC. 1341. EXPANDED ELIGIBILITY OF READY RESERVE MEMBERS UNDER TRICARE PROGRAM.

(a) UNCONDITIONAL ELIGIBILITY.—Subsection (a) of section 1076b of title 10, United States Code, is amended by striking ''and receive benefits'' and all that follows through ''an employer-sponsored health benefits plan''.

(b) PERMANENT AUTHORITY.—Subsection (l) of such section is repealed.

(c) CONFORMING AMENDMENTS.—Such section is further amended—

(1) by striking subsections (i) and (j); and

(2) by redesignating subsection (k) as subsection (i).

SEC. 1342. CONTINUATION OF NON-TRICARE HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DEPENDENTS.

(a) REQUIRED CONTINUATION.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

''§ 1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty

''(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for the members of the family of an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (g).

''(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a) while serving on active duty for a period of more than 30 days pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or a national emergency declared by the President or Congress.

''(2) For the purposes of this section, the members of the family of an eligible reserve component member include only the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

''(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for the members of the family of a reserve component member called or ordered to active duty is qualified health benefits plan coverage if—

''(1) the coverage was in force on the date on which the Secretary notified the reserve component member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order;

''(2) on such date, the coverage applied to the reserve component member and members of the family of the reserve component member; and

''(3) the coverage has not lapsed.

''(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage for the family members of a reserve component member is the amount of the premium payable by the member for the coverage of the family members.

''(e) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage for the family members of an eligible reserve component member called or ordered to active duty is the period that—

''(1) begins on the date of the call or order; and

''(2) ends at the end of the day on which the active duty terminates.

''(f) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

''(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for an eligible reserve component member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

''(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

''(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

''1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty.''.

(b) APPLICABILITY.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department before, on, or after the date of the enactment of this Act, but only with respect to qualified health benefits plan coverage (as described in subsection (c) of such section) that is in effect on or after the date of the enactment of this Act.

SA 3194. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 247, after line 21, insert the following:

SEC. 717. RESTORATION OF PREVIOUS POLICY REGARDING RESTRICTIONS ON USE OF DEPARTMENT OF DEFENSE MEDICAL FACILITIES OVERSEAS.

Section 1093(b) of title 10, United States Code, is amended—

(1) by inserting ''in the United States'' after ''treatment facility''; and

(2) by inserting ''in the United States'' after ''Department of Defense''.

SA 3195. Mrs. MURRAY (for herself and Mr. EDWARDS) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title X, add the following:

SEC. ___. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 658B of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended—

(1) by striking ''There is'' and inserting ''(a) IN GENERAL.—There is'';

(2) in subsection (a), as so designated, by inserting ''(except section 658T)'' after ''this subchapter''; and

(3) by adding at the end the following:

''(b) CHILD CARE FOR CERTAIN MILITARY DEPENDENTS.—There is authorized to be appropriated to carry out section 658T $200,000,000 for each of fiscal years 2005 through 2009.''.

(b) CHILD CARE ASSISTANCE.—The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended by adding at the end the following:

''SEC. 658T. CHILD CARE ASSISTANCE FOR MILITARY DEPENDENTS.

''(a) IN GENERAL.—The Secretary shall make grants to eligible spouses to assist the spouses in paying for the cost of child care services provided to dependents by eligible child care providers. In making the grants, the Secretary shall give priority to eligible spouses of qualified members on active duty for a period of more than 6 months.

''(b) DEFINITIONS.—In this section:

''(1) ACTIVE DUTY.—The term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

''(2) ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.—The term 'active duty for a period of more than 30 days' has the meaning given the term in section 101(d)(2) of title 10, United States Code.

''(3) DEPENDENT.—The term 'dependent' means an individual who is—

''(A) a dependent, as defined in section 401 of title 37, United States Code, except that such term does not include a person described in paragraph (1) or (3) of subsection (a) of such section; and

''(B) an individual described in subparagraphs (A) and (B) of section 658P(4).

''(4) ELIGIBLE SPOUSE.—The term 'eligible spouse' means a person who—

''(A) is a parent of one or more dependents of a qualified member; and

''(B) has the primary responsibility for the care of one or more such dependents.

''(5) QUALIFIED MEMBER.—The term 'qualified member' means a member of the reserve components of the Armed Forces on active duty for a period of more than 30 days.

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a spouse shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a description of the eligible child care provider who provides the child care services assisted through the grant.

''(d) RULE.—The provisions of this subchapter, other than section 658P and provisions referenced in section 658P, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.''.

(c) CONFORMING AMENDMENTS.—Section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''appropriated under this subchapter'' and inserting ''appropriated under section 658B(a)''; and

(B) in paragraph (2), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''; and

(2) in subsection (b)(1), by striking ''appropriated under section 658B'' and inserting ''appropriated under section 658(a)''.

SA 3196. Mr. DURBIN (for himself, Ms. MIKULSKI, Ms. LANDRIEU, Mrs. MURRAY, Mr. DAYTON, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.

(a) SHORT TITLE.—This section may be cited as the ''Reservists Pay Security Act of 2004''.

(b) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

''§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) For purposes of this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay while serving in the uniformed services or National Guard.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act.

(2) CONDITIONAL RETROACTIVE APPLICATION.—

(A) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after October 11, 2002 through the date of enactment of this Act, subject to the availability of appropriations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for purposes of subparagraph (A).

SA 3197. Mr. DAYTON (for himself and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 172, strike line 11 and all that follows through page 176, line 21.

SA 3198. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 269, line 20, strike ''$150,000,000'' and insert ''$500,000,000''.

SA 3199. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 195, between lines 10 and 11, insert the following:

SEC. 868. AVAILABILITY OF FEDERAL SUPPLY SCHEDULE SUPPLIES AND SERVICES TO UNITED SERVICE ORGANIZATIONS, INCORPORATED.

Section 220105(7) of title 36, United States Code, is amended by inserting before the semicolon at the end the following: '', including to acquire from the General Services Administration supplies and services on the Federal Supply Schedule of the General Services Administration as if the corporation were an executive agency of the United States''.

SA 3200. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title X, add the following:

SEC. 1055. ASSISTANCE TO FOREIGN MILITARY AND SECURITY FORCES FOR PEACEKEEPING AND PEACE ENFORCEMENT OPERATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, within the limitation established in subsection (c), the Secretary of Defense may—

(1) with the concurrence of the Secretary of State, provide assistance in fiscal year 2005 to military or security forces of a country to enhance their capability to participate in an international peacekeeping or peace enforcement operation; or

(2) transfer funds to the Secretary of State for the purpose of providing such assistance.

(b) TYPES OF ASSISTANCE.—Assistance provided under subsection (a) may include equipment, supplies, services, training, and funding.

(c) LIMITATION.—The cost of assistance provided under subsection (a) may not exceed $100,000,000 in fiscal year 2005.

(d) CONSTRUCTION OF AUTHORITY.—The authority to provide assistance under subsection (a) is in addition to any other authority to provide assistance to foreign nations or forces under any other provision of law.

SA 3201. Mr. KENNEDY (for himself, Mrs. MURRAY, and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title III, insert the following:

SEC. 353. EMERGENCY FUNDING FOR LOCAL EDUCATIONAL AGENCIES ENROLLING MILITARY DEPENDENT CHILDREN.

(a) SHORT TITLE.—This section may be cited as the ''Help for Military Children Affected by War Act of 2004''.

(b) GRANTS AUTHORIZED.—The Secretary of Defense is authorized to award grants, from distributions under subsection (e), to eligible local educational agencies for the additional education, counseling, and other needs of military dependent children who are affected by war or dramatic military decisions.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency that—

(A) had a number of military dependent children in average daily attendance in the schools served by the local educational agency during the school year preceding the school year for which the determination is made, that—

(i) equaled or exceeded 20 percent of the number of all children in average daily attendance in the schools served by such agency during the preceding school year; or

(ii) was 1,000 or more,

whichever is less; and

(B) is designated by the Secretary of Defense as impacted by—

(i) Operation Iraqi Freedom;

(ii) Operation Enduring Freedom;

(iii) high operations tempo;

(iv) military base realignment or closure; or

(v) privatization of military housing.

(2) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) MILITARY DEPENDENT CHILD.—The term ''military dependent child'' means a child described in subparagraph (B) or (D)(i) of section 8003(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a)(1)).

(d) USE OF FUNDS.—Grant funds provided under this section shall be used for—

(1) tutoring, after-school, and dropout prevention activities for military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B);

(2) professional development of teachers, principals, and counselors on the needs of military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B);

(3) counseling and other comprehensive support services for military dependent children with a parent who is or has been impacted by war-related action described in clause (i), (ii), or (iii) of subsection (c)(1)(B), including the hiring of a military-school liaison; and

(4) other basic educational activities associated with an increase in military dependent children.

(e) DISTRIBUTIONS.—

(1) EMERGENCY ALLOCATION PETITION.—Notwithstanding any other provision of this subsection and from not more than 10 percent of funds appropriated under subsection (f)(1) for a fiscal year, the Secretary of Defense may allocate, on a pro rata basis, such funds to eligible local educational agencies that anticipate a rapid increase in military dependent children and petition the Secretary of Defense for an emergency allocation of such funds.

(2) PRO RATA DISTRIBUTION.—Each eligible local educational agency not receiving funds under paragraph (1) for a fiscal year shall receive a grant under this section for the fiscal year in an amount that bears the same relation to the funds appropriated under subsection (f)(1) and not allocated under paragraph (1) for the fiscal year that do not exceed $20,000,000 as the number of military dependent children who were in average daily attendance in the schools served by such agency (as determined by the Secretary of Education) for the preceding or current school year, whichever is greater, bears to the total number of military dependent children who were in average daily attendance in the schools served by all eligible local educational agencies in the preceding school year (as so determined).

(3) HOLD HARMLESS.—The Secretary of Defense shall distribute funds appropriated under subsection (f)(1) and not allocated under paragraph (1) for a fiscal year that are in excess of $20,000,000 on a pro rata basis to each eligible local educational agency not receiving funds under paragraph (1) for the fiscal year that experiences (A) a decrease of 20 percent or more in the number of military dependent children who were in average daily attendance in the schools served by such agency, (B) a decrease of 20 percent or more in the amount of funds received under section 8003(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)), or (C) a decrease of 1,000 or more military dependent children who were in average daily attendance in the schools served by such agency, from the school year preceding the school year for which the determination is made to the school year for which the determination is made.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Defense such sums as may be necessary to carry out this section for fiscal year 2005 and each of the 2 succeeding fiscal years.

(2) SPECIAL RULE.—Funds appropriated under paragraph (1) are in addition to any funds made available to local educational agencies under section 351 or 352 of this Act or section 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703).

SA 3202. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 131, between lines 17 and 18, insert the following:

SEC. 653. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

The Consolidated Farm and Rural Development Act is amended by inserting after section 331F (7 U.S.C. 1981f) the following:

''SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

''(a) DEFINITION OF MOBILIZED MILITARY RESERVIST.—In this section, the term 'mobilized military reservist' means an individual who—

''(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

''(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.

''(b) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is rescinded.

''(c) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

''(d) NONACCRUAL OF INTEREST.—Interest on a direct loan made to a borrower described in this section shall not accrue during the period the borrower is a mobilized military reservist.

''(e) BORROWER NOT CONSIDERED TO BE DELINQUENT OR RECEIVING DEBT FORGIVENESS.—Notwithstanding section 373 or any other provision of this title, a borrower who receives assistance under this section shall not, as a result of the assistance, be considered to be delinquent or receiving debt forgiveness for purposes of receiving a direct or guaranteed loan under this title.''.

SA 3203. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. PERIODIC DETAILED ACCOUNTING FOR OPERATIONS OF THE GLOBAL WAR ON TERRORISM.

(a) MONTHLY ACCOUNTING.—Not later than 30 days after the end of each month, the Secretary of Defense shall submit to the chairmen and ranking members of the Committees on Armed Services of the Senate and the House of Representatives and to all the members of the Committees on Appropriations of the Senate and the House of Representatives, for such month for each operation described in subsection (b), a full accounting of all costs incurred for such operation during such month and all amounts expended during such month for such operation, and the purposes for which such costs were incurred and such amounts were expended.

(b) OPERATIONS COVERED.—The operations referred to in subsection (a) are as follows:

(1) Operation Iraqi Freedom.

(2) Operation Enduring Freedom.

(3) All other operations relating to the Global War on Terrorism.

(c) REQUIREMENT FOR COMPREHENSIVENESS.—For the purpose of providing a full and complete accounting of the costs and expenditures under subsection (a) for operations described in subsection (b), the Secretary shall account in the monthly submission under subsection (a) for all costs and expenditures that are reasonably attributable to such operations, including personnel costs.

SA 3204. Mrs. CLINTON (for herself, Mr. LEAHY, and Mr. KENNEDY) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 372, after line 17, insert the following:

SEC. 2844. PROHIBITION ON CLOSURE OF COMMISSARY STORES, MWR RETAIL FACILITIES, AND DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS WITHOUT AUTHORIZATION OF CONGRESS.

(a) PROHIBITION.—Notwithstanding any other provision of law, the Secretary of Defense may not close any commissary store, MWR retail facility, or Department of Defense dependent elementary or secondary school without the specific authorization of Congress for such action by law.

(b) COMPTROLLER GENERAL REPORT.—Not later than 90 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the policy of the Department of Defense, and the criteria utilized by the Department, with respect to the closure of commissary stores, MWR retail facilities, and Department of Defense dependent elementary and secondary schools, including an assessment whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces.

(c) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Committee on Armed Services of the Senate; and

(B) the Committee on Armed Services of the House of Representatives.

(2) The term ''MWR retail facility'' means an exchange store or other revenue-generating facility operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces.

SA 3205. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction,

and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 18, strike line 11, strike ''**AUTHORIZATION OF APPROPRIATIONS FOR**''.

On page 18, strike lines 15 through 24, and insert the following:

(a) AMOUNT.—Of the amount authorized to be appropriated for the Army for fiscal year 2005 for other procurement under section 101(5), $610,000,000 shall be available for both of the purposes described in subsection (b) and may be used for either or both of such purposes.

(b) PURPOSES.—The purposes referred to in subsection (a) are as follows:

On page 19, beginning on line 7, strike ''authorized to be appropriated in'' and insert ''available under''.

On page 19, line 17, strike ''authorized to be appropriated'' and insert ''available under''.

SA 3206. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 25, line 25, strike ''$9,698,958,000'' and insert ''$9,686,958,000''.

SA 3207. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 318, line 2, strike ''$980,557,000'' and insert ''$1,062,463,000''.

SA 3208. Mr. WARNER proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 247, between lines 13 and 14, insert the following:

SEC. 1022. TECHNICAL CORRECTION TO REFERENCE TO CERTAIN ANNUAL REPORTS.

Section 2474(f)(2) of title 10, United States Code, is amended by striking ''section 2466(e)'' and inserting ''section 2466(d)''.

SA 3209. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of title VII, add the following:

SEC. . CONTINUATION OF SUB-ACUTE CARE FOR TRANSITION PERIOD.

Section 1074j(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.''.

SA 3210. Mr. WARNER (for himself and Mr. LEVIN) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of subtitle B of title VII, insert the following:

SEC. 717. TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY DISABLED PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) AUTHORITY TO WAIVE DEBT.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, may waive (in whole or in part) the collection of payments otherwise due from a person described in subsection (b) for health benefits received by such person under section 1086 of title 10, United States Code, after the termination of that person's eligibility for such benefits.

(2) If the Secretary of Defense waives collection of payments from a person under paragraph (1), the Secretary may also authorize a continuation of benefits for such person under such section 1086 for a period ending not later than the end of the period specified in subsection (c) of this section.

(b) ELIGIBLE PERSONS.—A person is eligible for relief under subsection (a)(1) if—

(1) the person is described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) except for such paragraph, the person would have been eligible for the health benefits under such section; and

(3) at the time of the receipt of such benefits—

(A) the person satisfied the criteria specified in paragraph (2)(B) of such subsection (d); and

(B) the person was unaware of the loss of eligibility to receive the health benefits.

(c) PERIOD OF APPLICABILITY.—The authority provided under this section to waive collection of payments and to continue benefits shall apply, under terms and conditions prescribed by the Secretary of Defense, to health benefits provided under section 1086 of title 10, United States Code, during the period beginning on July 1, 1999, and ending at the end of December 31, 2004.

(d) CONSULTATION WITH OTHER ADMINISTERING SECRETARIES.—(1) The Secretary of Defense shall consult with the other administering Secretaries in exercising the authority provided in this section.

(2) In this subsection, the term ''administering Secretaries'' has the meaning given such term in section 1072(3) of title 10, United States Code.

SA 3211. Mr. WARNER (for himself and Mr. ALLARD) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike section 3120 and insert the following:

SEC. 3120. LOCAL STAKEHOLDER ORGANIZATIONS FOR DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITES.

(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish for each Department of Energy Environmental Management 2006 closure site a local stakeholder organization having the responsibilities set forth in subsection (c).

(2) The local stakeholder organization shall be established in consultation with interested elected officials of local governments in the vicinity of the closure site concerned.

(b) COMPOSITION.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall be composed of such elected officials of local governments in the vicinity of the closure site concerned as the Secretary considers appropriate to carry out the responsibilities set forth in subsection (c) who agree to serve on the organization, or the designees of such officials.

(c) RESPONSIBILITIES.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall—

(1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site;

(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and Tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site;

(3) transmit to appropriate officers and employees of the Department of Energy questions and concerns of governments, persons, and entities referred to paragraph (2) on the closure and post-closure operations of the site; and

(4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.

(d) DEADLINE FOR ESTABLISHMENT.—The local stakeholder organization for a Department of Energy Environmental Management 2006 closure site shall be established not later than six months before the closure of the site.

(e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to local stakeholder organizations under this section.

(f) DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITE DEFINED.—In this section, the term ''Department of Energy Environmental Management 2006 closure site'' means each clean up site of the Department of Energy scheduled by the Department as of January 1, 2004, for closure in 2006.

SA 3212. Mr. LEVIN (for Mr. BYRD) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy,

to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 177, strike lines 14 through 24, and insert the following:

(b) INCREASE AND REALIGNMENT OF WORKFORCE.—(1)(A) During fiscal years 2005, 2006, and 2007, the Secretary of Defense shall increase the number of persons employed in the defense acquisition and support workforce as follows:

(i) During fiscal year 2005, to 105 percent of the baseline number (as defined in subparagraph (B)).

(ii) During fiscal year 2006, to 110 percent of the baseline number.

(iii) During fiscal year 2007, to 115 percent of the baseline number.

(B) In this paragraph, the term ''baseline number'', with respect to persons employed in the defense acquisition and support workforce, means the number of persons employed in such workforce as of September 30, 2003 (determined on the basis of full-time employee equivalence).

(C) The Secretary of Defense may waive a requirement in subparagraph (A) and, subject to subsection (a), employ in the defense acquisition and support workforce a lesser number of employees if the Secretary determines and certifies to the congressional defense committees that the cost of increasing such workforce to the larger size as required under that subparagraph would exceed the savings to be derived from the additional oversight that would be achieved by having a defense acquisition and support workforce of such larger size.

(2) During fiscal years 2005, 2006, and 2007, the Secretary of Defense may realign any part of the defense acquisition and support workforce to support reinvestment in other, higher priority positions in such workforce.

SA 3213. Mr. LEVIN (for Mr. REED) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

Strike section 1005, and insert the following:

SEC. 1005. UNIFORM FUNDING AND MANAGEMENT OF SERVICE ACADEMY ATHLETIC AND RECREATIONAL EXTRACURRICULAR PROGRAMS.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 4359. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''4359. Athletic and recreational extracurricular programs: uniform funding.''.

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 6978. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Naval Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''6978. Athletic and recreational extracurricular programs: uniform funding.''.

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 9358. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''9358. Athletic and recreational extracurricular programs: uniform funding.''.

(d) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect on October 1, 2004, and shall apply with respect to funds appropriated for fiscal years beginning on or after such date.

SA 3214. Mr. WARNER (for Mr. SESSIONS) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

On page 365, between lines 18 and 19, insert the following:

SEC. 2830. LAND EXCHANGE, MAXWELL AIR FORCE BASE, ALABAMA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the City of Montgomery, Alabama (in this section referred to as the ''City''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 28 acres and including all of the Maxwell Heights Housing site and located at Maxwell Air Force Base, Alabama.

(b) CONSIDERATION.—(1) As consideration for the conveyance of property under subsection (a), the City shall convey to the United States all right, title, and interest of the City to a parcel of real property, including any improvements thereon, consisting of approximately 35 acres and designated as project AL 6–4, that is owned by the City and is contiguous to Maxwell Air Force Base, for the purpose of allowing the Secretary to incorporate such property into a project for the acquisition or improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code. The Secretary shall have administrative jurisdiction over the real property received under this subsection.

(2) If the fair market value of the real property received under paragraph (1) is less than the fair market value of the real property conveyed under subsection (a) (as determined pursuant to an appraisal acceptable to the Secretary), the Secretary may require the City to provide, pursuant to negotiations between the Secretary and the City, in-kind consideration the value of which when added to the fair market value of the property conveyed under subsection (b) equals the fair market value of the property conveyed under subsection (a).

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the City in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsections (a) and (b) shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under subsections (a) and (b) as the Secretary considers appropriate to protect the interests of the United States.

SA 3215. Mr. LEVIN (for Mr. SARBANES (for himself and Ms. MIKULSKI)) proposed an amendment to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; as follows:

At the end of subtitle C of title XXVIII, add the following:

SEC. 2830. LAND EXCHANGE, NAVAL AIR STATION, PATUXENT RIVER, MARYLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Maryland (in this section referred to as ''State''), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately five acres at Naval

Air Station, Patuxent River, Maryland, and containing the Point Lookout Lighthouse, other structures related to the lighthouse, and an archaeological site pertaining to the military hospital that was located on the property during the Civil War. The conveyance shall include artifacts pertaining to the military hospital recovered by the Navy and held at the installation.

(b) PROPERTY RECEIVED IN EXCHANGE.—As consideration for the conveyance of the real property under subsection (a), the State shall convey to the United States a parcel of real property consisting of approximately five acres located in Point Lookout State Park, St. Mary's County, Maryland.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, relocation expenses incurred under subsection (b), and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SA 3216. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill S. 1848, to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon; as follows:

On page 4, line 22, strike ''1999'' and insert ''2004''.

SA 3217. Mr. FRIST (for Mr. LEAHY) proposed an amendment to the bill H.R. 417, to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California; as follows:

At the end, add the following:

SEC. ___. GREEN MOUNTAIN NATIONAL FOREST EXPANSION.

(a) IN GENERAL.—The boundaries of the Green Mountain National Forest are modified to include all parcels of land depicted on the forest maps entitled ''Green Mountain Expansion Area Map I'' and ''Green Mountain Expansion Area Map II'', each dated February 20, 2002, which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia.

(b) MANAGEMENT.—Federally owned land delineated on the maps acquired for National Forest purposes shall continue to be managed in accordance with the laws (including regulations) applicable to the National Forest System.

(c) LAND AND WATER CONSERVATION FUND.—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9), the boundaries of the Green Mountain National Forest, as adjusted by this Act, shall be considered to be the boundaries of the national forest as of January 1, 1965.

SA 3218. Mr. FRIST (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill S. 882, to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safe-guards, and for other purposes; as follows:

On page 186, between lines 6 and 7, insert the following:

(e) DIRECTOR OF INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—Subsection (e) of section 7802, as amended by subsection (d), is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) DIRECTOR.—The Chairperson of the Oversight Board shall, without regard to the provisions of title 5, United Stated Code, governing appointments in the competitive service, appoint a Director for the Oversight Board. The Director shall be paid at the same rate as the highest-rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.''.

On page 186, line 7, strike ''(e)'' and insert ''(f)''.

On page 201, strike lines 17 through 21, and insert the following:

(1) by striking ''ANNUAL'' in the heading and inserting ''BIENNIAL'',

(2) by inserting ''every 2 years (beginning in 2004)'' after ''one of the semiannual reports'' in the matter preceding subparagraph (A),

On page 206, lines 6 and 7, strike ''**AND REFUND ANTICIPATION LOAN PROVIDERS**'' and insert ''**, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS**''.

On page 206, lines 12 and 13, strike ''**AND REFUND ANTICIPATION LOAN PROVIDERS**'' and insert ''**, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS**''.

On page 206, lines 18 and 19, strike ''and refund anticipation loan providers'' and insert '', refund anticipation loan providers, and payroll agents''.

On page 206, line 20, strike ''and''.

On page 207, line 2, strike the period and insert '', and''.

On page 207, between lines 2 and 3, insert the following:

''(C) to require the posting of a reasonable bond by each registered payroll agent.

On page 208, lines 14 and 15, strike ''or refund anticipation loan provider'' and insert '', refund anticipation loan provider, or payroll agent''.

On page 212, between lines 8 and 9, insert the following:

SEC. 142. JOINT TASK FORCE ON OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to review the Internal Revenue Service's determinations with respect to offers which raise equitable, public policy, or economic hardship grounds for compromise of a tax liability under section 7122 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability,

(3) to provide recommendations as to whether the Internal Revenue Service's evaluation of offers-in-compromise should include—

(A) the taxpayer's compliance history,

(B) errors by the Internal Revenue Service with respect to the underlying tax,

(C) wrongful acts by a third party which gave rise to the liability, and

(D) whether the taxpayer has made payments on the liability, and

(4) to annually report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (beginning in 2005) regarding such review and recommendations.

(b) MEMBERS OF JOINT TASK FORCE.—The membership of the joint task force under subsection (a) shall consist of 1 representative each from the Department of the Treasury, the Internal Revenue Service Oversight Board, the Office of the Chief Counsel for the Internal Revenue Service, the Office of the Taxpayer Advocate, the Office of Appeals, and the division of the Internal Revenue Service charged with operating the offer-in-compromise program.

(c) REPORT OF NATIONAL TAXPAYER ADVOCATE.—

(1) IN GENERAL.—Clause (i) of section 7803(c)(2)(B) (relating to annual reports), as amended by this Act, is amended by striking ''and'' at the end of subclause (X), by redesignating subclause (XI) as subclause (XII), and by inserting after subclause (X) the following new subclause:

''(XI) include a list of the factors taxpayers have raised to support their claims for offers-in compromise relief, the number of such offers submitted, accepted, and rejected, the number of such offers appealed, the period during which review of such offers have remained pending, and the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and evaluating such offers.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to reports in calendar year 2005 and thereafter.

On page 215, after line 22, add the following:

SEC. 153. PUBLIC SUPPORT BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871(a) (relating to Indian tribal governments treated as States for certain purposes) is amended by striking ''and'' at the end of subparagraph (C) of paragraph (6), by striking the period at the end of subparagraph (B) of paragraph (7) and inserting ''; and'', and by adding at the end the following new paragraph:

''(8) for purposes of—

''(A) determining support of an organization described in section 170(b)(1)(A)(vi), and

''(B) determining whether an organization is described in paragraph (1) or (2) of section 509(a) for purposes of section 509(a)(3).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) support received before, on, or after the date of the enactment of this Act, and

(2) the determination of the status of any organization with respect to any taxable year beginning after such date of enactment.

SEC. 154. PAYROLL AGENTS SUBJECT TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX.

(a) IN GENERAL.—Section 6672(a) is amended by inserting '', including any payroll agent,'' after ''Any person''.

(b) PENALTY NOT SUBJECT TO DISCHARGE IN BANKRUPTCY.—Section 6672(a) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision

of law, no penalty imposed under this section may be discharged in bankruptcy.''.

(c) CONSTRUCTION.—The amendment made by subsection (a) shall not be construed to create any inference with respect to the interpretation of section 6672 of the Internal Revenue Code of 1986 as such section was in effect on the day before the date of the enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring after the date of the enactment of this Act.

Beginning on page 224, line 14, strike all through page 225, line 8, and insert the following:

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking ''1-year period (18-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting ''18-month period''.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking ''or'' at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

''(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or''.

(c) EXCEPTION FOR REPORTABLE AND LISTED TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking ''or'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

On page 232, line 15, insert ''which is 60 days after the date'' after ''date''.

On page 400, after line 16, add the following:

PART IV—OTHER REVENUE PROVISIONS

SEC. 641. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

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

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

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

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (defining information return) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

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

SEC. 642. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'''(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'''(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'''(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

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

SA 3219. Mr. FRIST (for Mr. INHOFE) proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

On page 40, line 9, strike ''$50,000,000'' and insert ''$60,000,000''.

On page 83, line 10, strike ''$50,000,000'' and insert ''$60,000,000''.

On page 164, between lines 20 and 21, insert the following:

''(3) MITIGATION IN CLOSED BASINS.—

''(A) IN GENERAL.—A State may use amounts deposited in the State fund for projects to protect existing roadways from anticipated flooding of a closed basin lake, including—

''(i) construction—

''(I) necessary for the continuation of roadway services and the impoundment of water, as the State determines to be appropriate; or

''(II) for a grade raise to permanently restore a roadway the use of which is lost or reduced, or could be lost or reduced, as a result of an actual or predicted water level that is within 3 feet of causing inundation of the roadway in a closed lake basin;

''(ii) monitoring, studies, evaluations, design, or preliminary engineering relating to construction; and

''(iii) monitoring and evaluations relating to proposed construction.

''(B) REIMBURSEMENT.—The Secretary may permit a State that expends funds under subparagraph (A) to be reimbursed for the expenditures through the use of amounts made available under section 125(c)(1).

On page 407, strike lines 3 through 8 and insert the following:

Section 1214(d)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended by striking

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SA 3220. Mr. LOTT (for himself, Mr. COCHRAN, Mr. CHAMBLISS, Ms. SNOWE, and Mr. DORGAN) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the

Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XXVIII, add the following:

SEC. 2814. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS DURING 2005 OF DEFENSE BASE CLOSURE AND REALIGNMENT.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

SA 3221. Mr. LOTT (for himself, Ms. SNOWE, Mr. COCHRAN, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 280, after line 22, insert the following:

SEC. 1068. PRESERVATION OF SEARCH AND RESCUE CAPABILITIES OF THE FEDERAL GOVERNMENT.

The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by—

(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities.

SA 3222. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle F of title X, insert the following:

SEC. 1055. MILITARY EDUCATIONAL EXCHANGES WITH SENIOR OFFICERS AND OFFICIALS OF TAIWAN.

(a) AUTHORITY FOR MILITARY EDUCATIONAL EXCHANGES WITH SENIOR OFFICERS AND OFFICIALS OF TAIWAN.—Chapter 41 of title 10, United States Code, is amended by inserting after section 712 the following new section:

"§ 712a. Military personnel exchanges: Taiwan

''(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall establish a program for exchange of senior defense personnel between the United States and the Republic of Taiwan.

''(b) PURPOSE.—The purpose of exchanges of personnel under the program is to improve the defenses of Taiwan against attack by the People's Liberation Army of the People's Republic of China.

''(c) SENIOR DEFENSE PERSONNEL.—The Department of Defense personnel authorized to participate in the exchange program under this section are as follows:

''(1) A general or flag officer of the armed forces.

''(2) A civilian official at the level of Deputy Assistant Secretary of Defense or above.

''(d) ACTIVITIES.—(1) Activities under the exchange program shall include the following:

''(A) Threat analysis.

''(B) Military doctrine.

''(C) Force planning.

''(D) Logistical support.

''(E) Intelligence collection and analysis.

''(F) Operational tactics, techniques, and procedures.

''(G) Civil-military relations, including parliamentary relations.

''(2) In the planning and conduct of activities under subparagraphs (A) through (F) of paragraph (1), particular emphasis shall be placed on issues relating to the defense of Taiwan against submarine and missile attacks.

''(e) LOCATIONS.—Activities under the exchange program shall be carried out in the United States and in Taiwan.

''(f) ACTIVITY DEFINED.—In this section, the term 'activity' includes an exercise, an event, and an opportunity for observation.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 713 the following new item:

''712a. Military personnel exchanges: Taiwan.''.

SA 3223. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, between lines 9 and 10, insert the following:

SEC. 642. ELIGIBILITY FOR REDUCED NON-REGULAR SERVICE RETIRED PAY BEFORE AGE 60.

(a) ELIGIBILITY BEGINNING AT AGE 55.—Section 12731(a)(1) of title 10, United States Code, is amended by striking ''60 years of age'' and inserting ''55 years of age''.

(b) REDUCED RETIRED PAY WHEN COMMENCED BEFORE AGE 60.—Section 12739 of such title is amended—

(1) in subsection (a), by inserting '', subject to subsection (d),'' after ''this chapter is'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection (d):

''(d) In the case of a person to whom payment of retired pay under this chapter commences after the person attains 55 years of age and before the person attains 60 years of age, the total amount of the monthly retired pay computed under subsections (a), (b), and (c) shall be reduced by the percentage specified for the age of the person when payment of the retired pay commences, as follows:

''Age (in years) when payment of retired pay commences:	Percentage by which retired pay is to be reduced:
55	12.5
56	9.0
57	6.0
58	3.5
59	1.5.''.

(c) CONTINUATION OF AGE 60 AS MINIMUM AGE FOR ELIGIBILITY FOR UNIFORMED SERVICES HEALTH BENEFITS.—Section 1074(b) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

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

''(2) Paragraph (1) does not apply to a member or former member entitled to retired pay for non-regular service under chapter 1223 of this title who is under 60 years of age.''.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act.

SA 3224. Ms. COLLINS (for herself and Mr. LEVIN) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 290, after line 22, insert the following:

SEC. 1107. BID PROTESTS BY FEDERAL EMPLOYEES IN ACTIONS UNDER OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76.

(a) ELIGIBILITY TO PROTEST.—(1) Section 3551(2) of title 31, United States Code, is amended to read as follows:

''(2) The term 'interested party'—

''(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

''(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, includes—

''(i) any official who submitted the agency tender in such competition; and

''(ii) any one person who, for the purpose of representing them in a protest under this subchapter that relates to such competition, has been designated as their agent by a majority of the employees of such Federal agency who are engaged in the performance of such activity or function.''.

(2)(A) Subchapter V of chapter 35 of such title is amended by adding at the end the following new section:

"§ 3557. Expedited action in protests for public-private competitions

''For protests in cases of public-private competitions conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of Federal agencies, the Comptroller General shall administer the provisions of this subchapter in a manner best suited for expediting final resolution of such protests and final action in such competitions.''.

(B) The chapter analysis at the beginning of such chapter is amended by inserting after

the item relating to section 3556 the following new item:

''3557. Expedited action in protests for public-private competitions.''.

(b) RIGHT TO INTERVENE IN CIVIL ACTION.—Section 1491(b) of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) If a private sector interested party commences an action described in paragraph (1) in the case of a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, then an official or person described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.''.

(c) APPLICABILITY.—Subparagraph (B) of section 3551(2) of title 31, United States Code (as added by subsection (a)), and paragraph (5) of section 1491(b) of title 28, United States Code (as added by subsection (b)), shall apply to—

(1) protests and civil actions that challenge final selections of sources of performance of an activity or function of a Federal agency that are made pursuant to studies initiated under Office of Management and Budget Circular A–76 on or after January 1, 2004; and

(2) any other protests and civil actions that relate to public-private competitions initiated under Office of Management and Budget Circular A–76 on or after the date of the enactment of this Act.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, May 19, 2004. The purpose of this meeting will be to mark up legislation to reauthorize child nutrition programs.

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

COMMITTEE ON ARMED SERVICES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on May 19, 2004, at 8:30 a.m., in open session, to continue to receive testimony on allegations of mistreatment of Iraqi prisoners.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, May 19, 2004, at 10:00 a.m. to conduct a hearing on ''Congressional Oversight of the IMF and World Bank.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 19, 2004, at 9:30 a.m. on from public service to private sector: Spinning the Revolving Door for Personal Gain.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 19 at 11:30 a.m., to consider pending calendar business.

Agenda

Agenda Item 1: S. 155—A bill to convey to the town of Frannie, WY, certain land withdrawn by the Commissioner of Reclamation.

Agenda Item 2: S. 180—A bill to establish the National Aviation Heritage Area, and for other purposes.

Agenda Item 3: S. 203—A bill to open certain withdrawn land in Big Horn County, WY, to locatable mineral development and bentonite mining.

Agenda Item 4: S. 211—A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes.

Agenda Item 5: S. 323—A bill to establish the Atchafalaya National Heritage Area, LA.

Agenda Item 9: S. 1241—A bill to establish the Kate Mullany National Historic Site in the State of New York, and for other purposes.

Agenda Item 13: S. 1467—A bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado, and for other purposes.

Agenda Item 14: S. 1521—A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post 22 in Phrump, NV, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community.

Agenda Item 16: S. 1727—A bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978.

Agenda Item 17: S. 2046—A bill to authorize the exchange of certain land in Everglades National Park.

Agenda Item 18: S. 2052—A bill to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail.

Agenda Item 20: S. 2180—A bill to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

Agenda Item 21: S. 2319—A bill to authorize and facilitate hydroelectric power licensing of the Tapoco Project.

Agenda Item 23: H.R. 961—To promote Department of the Interior efforts to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin, and for other purposes.

Agenda Item 25: H.R. 1446—To support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

Agenda Item 26: H.R. 1658—To amend the Railroad Right-of-Way Conveyance Validation Act to validate additional conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to facilitate the construction of the transcontinental railway, and for other purposes.

In addition, the committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON FINANCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, May 19, 2004, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on Oversight and Nomination Hearing: The Treasury Department and Terrorism Financing; and, to consider the nominations of John O. Colvin, to be Judge of the U.S. Tax Court; Juan C. Zarate, to be Assistant Secretary for Terrorism Finance, U.S. Department of the Treasury; and, Stuart Levey to the Under Secretary for Enforcement, U.S. Department of the Treasury.

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 19, 2004 at 9:30 a.m. to hold a hearing on Iraq's Transition—The Way Ahead (Part II).

The PRESIDING OFFICER. Without objection, it so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, May 19, 2004, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting on S.J. Res. 37, resolution to acknowledge a long history of official depredations and ill-conceived polices by the United States Government regarding Indian Tribes and offer an apology to all Native peoples on behalf of the United States, and S. 2277, a bill to amend the Act of November 2, 1966 (80 Stat. 1112) to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation; to be followed immediately by a hearing on S. 1696, a bill to amend the Indian Self-Determination and Education Assistance Act to provide further self government by Indian tribes.

The PRESIDING OFFICER. Without objection, it so ordered.

SPECIAL COMMITTEE ON AGING

Mr. GREGG. Mr. President, I ask unanimous consent that the Special