S. 2212

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 2212, a bill to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries.

S. 2324

At the request of Mr. CHAMBLISS, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2324, a bill to extend the deadline on the use of technology standards for the passports of visa waiver participants.

S. 2351

At the request of Ms. COLLINS, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes.

At the request of Mr. FEINGOLD, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 2351, supra.

S. 2363

At the request of Mr. HATCH, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Nevada (Mr. ENSIGN) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2425

At the request of Mr. BYRD, the names of the Senator from North Dakota (Mr. CONRAD), the Senator from Iowa (Mr. HARKIN), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 2425, a bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews.

S. 2434

At the request of Mr. HATCH, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Nevada (Mr. REID) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2434, a bill to establish the Commission to Study the Potential Creation of a National Museum of the American Latino Community to develop a plan of action for the establishment and maintenance of a National Museum of the American Latino Community in Washington, DC, and for other purposes.

S. 2462

At the request of Mr. WARNER, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2462, a bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages.

S. 2480

At the request of Mr. GRASSLEY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2480, a bill to amend title 23, United States Code, to research and prevent drug impaired driving.

S.J. RES. 36

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S.J. Res. 36, a joint resolution approving the renewal of import restrictions contained in Burmese Freedom and Democracy Act of 2003.

S. CON. RES. 8

At the request of Mr. LIEBERMAN, his name was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as ''National Visiting Nurse Association Week.''

S. CON. RES. 81

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

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. CON. RES. 106

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. Con. Res. 106, a concurrent resolution urging the Government of Ukraine to ensure a democratic, transparent, and fair election process for the presidential election on October 31, 2004.

S. RES. 357

At the request of Mr. SUNUNU, his name was added as a cosponsor of S. Res. 357, a resolution designating the week of August 8 through August 14, 2004, as ''National Health Center Week.''

S. RES. 365

At the request of Mr. BROWNBACK, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. Res. 365, a resolution expressing the sense of the Senate regarding the detention of Tibetan political prisoners by the Government of the People's Republic of China.

AMENDMENT NO. 3196

At the request of Mr. DURBIN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of amendment No. 3196 intended to be proposed to S. 2400, an original bill 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.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON of Florida (for himself and Mrs. FEINSTEIN):

S. 2481. A bill to require that notices to consumers of health and financial services include information on the outsourcing of sensitive personal information abroad, to require relevant Federal agencies to prescribe regulations to ensure the privacy and security of sensitive personal information outsourced abroad, to establish requirements for foreign call centers, and for purposes; to the Committee on the Judiciary.

Mr. NELSON of Florida. Mr. President, I rise today to express my deep concern about an issue that illustrates the continuing erosion of Americans' privacy rights. My concern is related to the practice of outsourcing. When U.S. companies outsource sensitive customer information for processing overseas, they may be outsourcing our privacy rights along with it.

We all know that recently it has become popular for American companies to send internal paperwork to be done in other countries, by foreign companies.

When a U.S. company allows a foreign company to process customer data, the foreign company may be given access to the most sensitive types of customer information. Our health records, bank account numbers, social security numbers, tax forms, and credit card numbers are now being shipped abroad—without the knowledge of the customer and beyond the reach of U.S. privacy laws.

This phenomenon means that consumers are almost powerless to stop foreign scam artists from misusing their sensitive information. What types of abuses can occur under this scenario?

In one recent shocking example, a U.S. hospital hired a medical transcriber in Pakistan through a subcontractor to work with sensitive patient health information. Later, the foreign worker claimed that she had not been paid for her work.

So, you know what she did? She threatened to post patients' medical records online unless she was paid. Luckily, she got her paycheck and doesn't seem to have posted anything online.

But this situation shows us the potential for gross violations of consumer privacy. The U.S. hospital said that it never even knew that the foreign transcriber had been hired through a subcontractor and it therefore had never bound her contractually to follow any privacy or security standards.

Another potential abuse of offshoring sensitive customer data is identity theft. The illegal theft of someone's identity is a profoundly disturbing and costly problem in this information age.

Moreover, illegal misuse of sensitive information can also have national security implications. For example, data about some of our Nation's power grids allegedly has been outsourced to companies overseas. Imagine the harm that terrorists might do if they got hold of that type of confidential information.

As our global economy expands at such a rapid pace, we simply cannot tolerate the outsourcing of Americans' privacy rights overseas. We need to be proactve on this potentially explosive issue. Make no mistake, the Pakistani transcriber incident is not the first or the last time that sensitive customer information becomes endangered in a foreign country. The time to act is now, instead of reacting only after our privacy rights are further eroded.

In light of these circumstances, today I am introducing a bill—along with Senator FEINSTEIN—that begins to address these privacy and security concerns. The bill is called the INFO Act, which is short for The Increasing Notice of Foreign Outsourcing Act.

The INFO Act is designed to help ensure that sensitive consumer information is protected and that U.S. companies can be held accountable for breakdowns in the security of customer information.

Specifically, the INFO Act that we are introducing today would require the following things: First, U.S. companies in the health care industry and the financial industry must tell their customers that their sensitive health information and financial information is being processed by companies in foreign nations, where privacy safeguards may be less stringent.

Second, U.S. companies in the health care industry and the financial industry must promise their customers that they are complying with U.S. privacy laws, which are designed to keep sensitive customer information secure even when it is outsourced.

Third, U.S. companies in the health care industry and the financial industry must make sure that each foreign company that is handling sensitive customer information has agreed by contract to meet U.S. privacy standards and to keep sensitive customer information secure.

Fourth, U.S. companies may examine the business operations of the foreign company to make sure the foreign company is meeting privacy standards and is keeping sensitive customer information secure.

Fifth, a foreign company must notify the U.S. company of any data security breach. The U.S. company must then notify the U.S. regulatory agency, which can then hold the U.S. company accountable for the actions of the foreign company.

Finally, an employee of a foreign call center must tell a U.S. customer where the employee is located, if the U.S. customer asks for this information.

I strongly believe that we need to act now, before the privacy issues raised by offshoring begin to explode.

Let me emphasize that I see this bill as both pro-consumer and pro-business. Consumers will be informed about how their sensitive information is handled and they can learn when security breaches occur. Additionally, foreign companies that handle customer data will be held accountable to the U.S. company that gives them their work. And U.S. companies will be upfront in informing their customers about offshoring sensitive data before customer backlash occurs.

With this sort of system in place, we hopefully can reduce the chances of customer data being misused, and allow U.S. companies to play on a level playing field where all interested parties know the rules of the game.

I have a history of trying to solve consumer issues in ways that are not needlessly burdensome to U.S. businesses. That is why my office, as well as Senator FEINSTEIN's office, has met several times with industry representatives during the development of this bill.

I was interested to find ways for businesses to protect consumer privacy rights without having to sharply raise prices or limit products and services. I believe that the INFO Act has achieved those goals.

Consumer privacy has always been one of my top priorities. Now, as always, I look forward to working with all interested parties to resolve this consumer privacy issue in a timely and effective manner.

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

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

S. 2481

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Increasing Notice of Foreign Outsourcing Act''.

**SEC. 2. HEALTH PRIVACY.**

(a) FOREIGN-BASED BUSINESS ASSOCIATE.—In this section, the term ''foreign-based business associate'' means a business associate, as defined under the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), whose operation is based outside the United States and that receives protected health information and processes such information outside the United States.

(b) NOTICES.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall revise the regulations prescribed pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) to require a covered entity (as defined under such regulations and referred to in this section as a ''covered entity''), that outsources protected health information (as defined under such regulations and referred to in this section as ''protected health information''), outside the United States to include in such entity's notice of privacy protections the following:

(A) The following information in simple language:

(i) Notification that the covered entity outsources protected health information to foreign-based business associates.

(ii) Any risks and consequences to the privacy and security of protected health information that arise as a result of the processing of such information outside the United States.

(iii) Additional measures the covered entity is taking to protect the protected health information outsourced for processing outside the United States.

(B) A certification that the covered entity has taken reasonable steps to ensure that the handling of protected health information will be done in compliance with applicable laws in all instances where protected health information is processed outside the United States, including the reasons for the certification.

(2) EFFECTIVE DATE.—A covered entity shall be required to include in such entity's notice of privacy protections the information and certification described in paragraph (1) for notices issued on or after the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection shall be construed to require a covered entity to reissue notices issued before the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such notices the information and certification described in paragraph (1).

(c) RULEMAKING.—

(1) IN GENERAL.—

(A) REGULATORY AUTHORITY.—The Secretary shall—

(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this section with respect to foreign outsourcing; and

(ii) determine the appropriate penalties to impose upon a covered entity for a violation of a provision of this subsection or subsection (b).

(B) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this Act.

(2) NECESSARY REGULATIONS.—The Secretary shall prescribe regulations—

(A) requiring that a contract between a covered entity and such entity's foreign-based business associate contain a provision that provides such entity with the right to audit such associate, as needed, to monitor performance under the contract; and

(B) requiring that foreign-based business associates and subcontractors of covered entities be contractually bound by Federal privacy standards and security safeguards.

(d) BREACH OF SECURITY.—

(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term ''breach of security of the system''—

(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to protected health information maintained by the covered entity, foreign-based business associate, or subcontractor; and

(B) does not include good faith acquisition of protected health information by an employee or agent of the covered entity, foreign-based business associate, or subcontractor for the purposes of the entity, associate, or subcontractor, if the protected health information is not used or subject to further unauthorized disclosure.

(2) DATABASE SECURITY.—

(A) COVERED ENTITY.—A covered entity—

(i) that owns or licenses electronic data containing protected health information shall, following the discovery of a breach of security of the system containing such data, notify the Secretary of such breach; or

(ii) that receives a notification under subparagraph (B) of a breach, shall notify the Secretary of such breach.

(B) OTHER PARTIES.—

(i) THIRD PARTY.—The Secretary shall require that a contract between a covered entity and such entity's foreign-based business associate contain a provision that if the foreign-based business associate (or any subcontractor of such associate) owns or licenses electronic data containing protected health information that was provided to the associate through the covered entity, the associate (or subcontractor) shall, following the discovery of a breach of security of the system containing such data—

(I) notify the entity from which it received the protected health information of such breach; and

(II) provide a description to the entity from which it received the protected health information of any corrective actions taken to guard against future security breaches.

(ii) NOTIFICATION PROCESS.—Each entity that receives a notification under clause (i) shall notify the entity from which it received the protected health information of such breach until the notification reaches the foreign-based business associate who shall, in turn, notify the covered entity of such breach.

(C) TIMELINESS OF NOTIFICATION.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

(i) the discovery of a breach of security of the system; and

(ii) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

(3) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.

**SEC. 3. FINANCIAL PRIVACY.**

(a) FOREIGN-BASED BUSINESS.—Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

''(12) FOREIGN-BASED BUSINESS.—The term 'foreign-based business' means a nonaffiliated third party whose operation is based outside the United States and that receives nonpublic personal information and processes such information outside the United States.''.

(b) FINANCIAL NOTICES.—

(1) IN GENERAL.—Section 503(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(b)) is amended—

(A) in paragraph (3), by striking ''and'' after the semicolon;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) if the financial institution outsources nonpublic personal information outside the United States—

''(A) information informing the consumer in simple language—

''(i) that the financial institution outsources nonpublic personal information to foreign-based businesses;

''(ii) of any risks and consequences to the privacy and security of an individual's nonpublic personal information that arise as a result of the processing of such information outside the United States; and

''(iii) of the additional measures the financial institution is taking to protect the nonpublic personal information outsourced for processing outside the United States; and

''(B) a certification that the financial institution has taken reasonable steps to ensure that the handling of nonpublic personal information will be done in compliance with applicable laws in all instances where nonpublic personal information is processed outside the United States, including the reasons for the certification.''.

(2) EFFECTIVE DATE.—A financial institution shall include in such institution's disclosure the information and certification described in the amendment made by paragraph (1)(C) for disclosures provided on or after the date on which the regulatory agency that has jurisdiction over such institution pursuant to section 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6805) prescribes regulations pursuant to the amendments made by this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection, or the amendments made by this subsection, shall be construed to require a financial institution to reissue disclosures provided before the date on which the regulatory agency that has jurisdiction over such institution pursuant to section 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6805) prescribes regulations pursuant to the amendments made by this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such disclosures the information and certification described in the amendment made by paragraph (1)(C).

(c) RULEMAKING.—Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804) is amended by adding at the end the following:

''(c) RULEMAKING ON FOREIGN OUTSOURCING.—

''(1) IN GENERAL.—

''(A) REGULATORY AUTHORITY.—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission (referred to in this subsection as the 'regulatory agencies') shall—

''(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this subtitle with respect to foreign outsourcing, with respect to the financial institutions subject to their jurisdiction under section 505; and

''(ii) determine the appropriate penalties to impose upon financial institutions for a violation of a provision of this subsection.

''(B) COORDINATION, CONSISTENCY, AND COMPARABILITY.—The regulatory agencies shall consult and coordinate with each other for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

''(C) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this subsection.

''(2) NECESSARY REGULATIONS.—The regulatory agencies shall prescribe regulations—

''(A) requiring that a contract between a financial institution and such institution's foreign-based business contain a provision that provides such institution with the right to audit such business, as needed, to monitor performance under the contract; and

''(B) requiring that foreign-based businesses and subcontractors of financial institutions be contractually bound by Federal privacy standards and security safeguards.''.

(d) BREACH OF SECURITY.—Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802) is amended by adding at the end the following:

''(f) BREACH OF SECURITY.—

''(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term 'breach of security of the system'—

''(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to nonpublic personal information maintained by the financial institution, foreign-based business, or subcontractor; and

''(B) does not include good faith acquisition of nonpublic personal information by an employee or agent of the financial institution, foreign-based business, or subcontractor for the purposes of the institution, business, or subcontractor, if the nonpublic personal information is not used or subject to further unauthorized disclosure.

''(2) DATABASE SECURITY.—

''(A) FINANCIAL INSTITUTION.—A financial institution—

''(i) that owns or licenses electronic data containing nonpublic personal information shall, following the discovery of a breach of security of the system containing such data, notify the entity under which the institution is subject to jurisdiction under section 505 of such breach; or

''(ii) that receives a notification under subparagraph (B) of a breach, shall notify the entity under which the institution is subject to jurisdiction under section 505 of such breach.

''(B) OTHER PARTIES.—

''(i) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission shall require, with respect to the financial institutions subject to their jurisdiction under section 505, that a contract between a financial institution and such institution's foreign-based business contain a provision that if the foreign-based business (or any subcontractor of such business) owns or licenses electronic data containing nonpublic personal information that was provided to the business through the financial institution, the business (or subcontractor) shall, following the discovery of a breach of security of the system containing such data—

''(I) notify the entity from which it received the nonpublic personal information of such breach; and

''(II) provide a description to the entity from which it received the nonpublic personal information of any corrective actions taken to guard against future security breaches.

''(ii) NOTIFICATION PROCESS.—Each entity that receives a notification under clause (i) shall notify the entity from which it received the nonpublic personal information of such breach until the notification reaches the foreign-based business who shall, in turn, notify the financial institution of such breach.

''(C) TIMELINESS OF NOTIFICATION.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

''(i) the discovery of a breach of security of the system; and

''(ii) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

''(3) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.''.

**SEC. 4. FOREIGN CALL CENTERS.**

(a) FOREIGN CALL CENTER DEFINED.—In this section, the term ''foreign call center'' means a foreign-based service provider or a foreign-based subcontractor of such provider that—

(1) is unaffiliated with the entity that utilizes such provider or subcontractor; and

(2) provides customer-based service and sales or technical assistance and expertise to individuals located in the United States via the telephone, the Internet, or other telecommunications and information technology.

(b) REQUIREMENT.—A contract between a foreign call center and an entity that utilizes such foreign call center to initiate telephone calls to, or receive telephone calls from, individuals shall include a requirement that each employee of the foreign call center disclose the physical location of such employee upon the request of such individual.

(c) CERTIFICATION REQUIREMENT.—An entity described in subsection (b) shall submit an annual certification to the Federal Trade Commission on whether or not the entity and its subsidiaries, and the foreign call center employees and its subsidiaries, have complied with subsection (b). Such annual certifications shall be made available to the public.

(d) NONCOMPLIANCE.—An entity described in subsection (b) or its subsidiaries that violates subsection (b) shall be subject to such civil penalties as the Federal Trade Commission prescribes under subsection (e).

(e) REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Federal Trade Commission shall prescribe such regulations as are necessary for effective monitoring and compliance with this section. Such regulations shall include appropriate civil penalties for noncompliance with this section.

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By Mrs. CLINTON (for herself and Mr. SCHUMER):

S. 2482. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 to prohibit the dumping of dredged material in certain bodies of water; to the Committee on Environment and Public Works.

Mrs. CLINTON. Mr. President, I rise today to introduce the Long Island Sound Protection Act on behalf of myself and Senator SCHUMER. This legislation, which Congressman BISHOP will be introducing in the House, would ensure that contaminated dredge materials are not dumped in Long Island Sound.

The need for this legislation is that the U.S. Environmental Protection Agency is finalizing the process of designating several sites in Long Island Sound as long term disposal sites under the Marine Protection, Research, and Sanctuaries Act. Once this designation is complete, the sites will be open to receive dredged material indefinitely.

I recognize that there has been and will continue to be a need to dredge harbors and marinas around the Sound to support commerce and navigation. But I am concerned that EPA has not looked hard enough at alternatives to dumping in the sound. While not all dredged materials are contaminated, we know that some are contaminated with heavy metals and other toxins. In my view, we should not use the Sound as a dumping ground for those materials.

We must look more thoroughly for alternatives to dumping contaminated waste in Long Island Sound. We need careful planning that involves a strong role for the State of New York in this process. That is why this legislation is so important—we cannot let short term economics overtake long term environmental concerns.

The Long Island Sound Protection Act would require the Corps of Engineers and the EPA to work with other federal agencies and the states of New York and Connecticut to develop a dredged material management plan (DMMP) that would govern dumping in the sound.

The Long Island Sound Protection Act would require the DMMP to meet a set of objectives, including: Identifying the major sources and quantities of dredge material and contamination that require disposal; determining management actions that are to be taken to reduce sediment and contaminant loading of dredged areas; thoroughly assessing alternative locations, treatment technologies and beneficial uses for dredged material; ensuring that dumping is the disposal option of the last resort after all other options have been exhausted; securing alternative methods of disposal of contaminated dredge materials, including decontamination technologies, and alternative uses of materials, including upland disposal, containment, beach nourishment, marsh restoration, habitat construction, and other beneficial reuses; and confirming the specific roles of Federal, State, and local agencies with respect to various aspects of dredged material management.

The Long Island Sound Protection Act also would stipulate that no dumping can occur in Long Island Sound, except in accordance with a DMMP that has been approved by the Governors of New York and Connecticut.

In addition, the bill would provide for public hearings in both New York and Connecticut during the development of the DMMP.

To me this is a common sense solution to the current dredge disposal problem. It would enable both New York and Connecticut to play a stronger role in determining what we put in the Sound. And it would provide for a much harder look at upland disposal and beneficial reuse as alternatives to dumping in the Sound.

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

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

S. 2482

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Long Island Sound Protection Act''.

**SEC. 2. PROHIBITION ON DUMPING OF DREDGED MATERIAL.**

Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416) is amended by striking subsection (f) and inserting the following:

''(f) PROHIBITION ON DUMPING OF DREDGED MATERIAL.—

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

''(A) COVERED BODY OF WATER.—The term 'covered body of water' means—

''(i) Long Island Sound;

''(ii) Fisher's Island Sound;

''(iii) Block Island Sound;

''(iv) Peconic Bay; and

''(v) any harbor or tributary of a body of water described in any of clauses (i) through (iv).

''(B) COVERED PROJECT.—The term 'covered project' means—

''(i) any Federal dredging project (or any project conducted for a Federal agency pursuant to Federal authorization);

''(ii) a dredging project carried out by a non-Federal entity that results in the production of more than 25,000 cubic yards of dredged material; and

''(iii) any of 2 or more dredging projects carried out by 1 or more non-Federal entities in a covered body of water, simultaneously or sequentially within a 180-day period, that result, in the aggregate, in the production of more than 25,000 cubic yards of dredged material.

''(C) PLAN.—The term 'plan' means the dredged material management plan required under paragraph (5).

''(2) PROHIBITION.—No dredged material from any covered project shall be dumped, or transported for the purpose of dumping, into any covered body of water unless and until the dredged material is determined by the Administrator—

''(A) to have, or to cause (including through bioaccumulation), concentrations of chemical constituents that are not greater than those concentrations present in the water column, sediments, and biota of areas proximate to, but unaffected by, the proposed disposal site; and

''(B) to meet all requirements under this title (including the trace contaminant provision under section 227.6 of title 40, Code of Federal Regulations (or a successor regulation), and requirements under other regulations promulgated under section 108).

''(3) DESIGNATION OF SITES.—No dredged material shall be dumped, or transported for the purpose of dumping, into any covered body of water except—

''(A) at a site designated by the Administrator in accordance with section 102(c); and

''(B) upon a determination by the Administrator, following approval of the plan required under paragraph (5)(F), that no feasible alternative to ocean disposal, including sediment remediation, beneficial reuse, and land-based alternatives, is available prior to the time of designation.

''(4) RELATIONSHIP TO OTHER LAW.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this title applies to each covered body of water.

''(B) EXCEPTION.—No waiver under section 103(d) shall be available for the dumping of dredged material in any covered body of water.

''(5) DREDGED MATERIAL MANAGEMENT PLAN.—

''(A) IN GENERAL.—Before designation of any dredged material disposal site in a covered body of water, the Secretary and the Administrator, in consultation with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Coast Guard, and the States of Connecticut and New York, shall—

''(i) develop a dredged material management plan for the management of all dredged sediment in the covered bodies of water; and

''(ii) submit the plan to Congress and the Governors of the States of Connecticut and New York.

''(B) OBJECTIVES.—The objectives of the plan shall be—

''(i) to identify sources, quantities, and the extent of contamination of dredged material that requires disposal;

''(ii) to determine management actions that are to be taken to reduce sediment and contaminant loading of dredged areas;

''(iii) to thoroughly assess alternative locations, treatment technologies, and beneficial uses for dredged material;

''(iv) to ensure that dumping is the disposal option of last resort for dredged material and is used only after all other options have been exhausted;

''(v) to secure—

''(I) alternative methods of disposal of dredged materials, including decontamination technologies; and

''(II) alternative uses of materials, including upland disposal, containment, beach nourishment, marsh restoration, habitat construction, and other beneficial reuses; and

''(vi) to confirm the specific roles of Federal, State, and local agencies with respect to various aspects of dredged material management.

''(C) REQUIREMENTS.—The plan shall include environmental, economic, and other analysis required to meet the objectives listed in subparagraph (B), including—

''(i) an analysis of strategies to reduce sediment loading of harbors and navigation areas;

''(ii) an analysis of sources of sediment contamination, including recommendations for management measures to limit or reduce those contamination sources;

''(iii) an analysis of options for reducing dredging needs through modification of navigation strategies;

''(iv) an analysis of decontamination technologies, including subsequent alternative uses of decontaminated materials (such as upland disposal, containment, beach nourishment, marsh restoration, and habitat construction); and

''(v) a program for use of alternative methods of disposal and use of dredged material, including alternatives to dumping or dispersal in a covered body of water.

''(D) PUBLIC INPUT.—The Secretary and the Administrator shall—

''(i) during the development of the plan, hold in the States of Connecticut and New York a series of public hearings on the plan; and

''(ii) append to the plan a summary of the public comments received.

''(E) SUPPORT.—Each of the Federal agencies referred to in subparagraph (A) shall provide such staff support and other resources as are necessary to carry out this paragraph.

''(F) APPROVAL BY CONNECTICUT AND NEW YORK.—

''(i) IN GENERAL.—Not later than 60 days after the date of receipt of the plan, the Governors of the States of Connecticut and New York shall notify the Secretary and the Administrator of whether the States approve or disapprove the plan.

''(ii) DUMPING OF DREDGED MATERIAL.—No dredged material from a covered project may be dumped, or transported for the purpose of dumping, in any covered body of water unless the dredged material—

''(I) conforms to a plan that has been approved by the Governors of the States of Connecticut and New York; and

''(II) is to be dumped in a dredged material disposal site designated by the Administrator under this title.

''(iii) FINALITY.—No dredged material disposal plan shall become final until the plan has been approved by the States of Connecticut and New York under clause (i).

''(iv) PREVIOUSLY DESIGNATED SITES.—No dredged material disposal site in any covered body of water that was designated before the date of enactment of this clause shall be used for dumping of dredged material from a covered project until the plan has been approved by the States of Connecticut and New York under clause (i).

''(G) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $5,000,000 for each of fiscal years 2005 and 2006.''.

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By Mr. SPECTER:

S. 2483. A bill to increase, effective as of December 1, 2004, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I have sought recognition to comment on legislation I am introducing today to provide a cost-of-living, COLA, adjustment for certain veterans' benefits programs. This COLA adjustment would affect payments made to nearly 3 million Department of Veterans Affairs, VA, beneficiaries, and would be reflected in beneficiary checks that are received in January 2005, and thereafter.

An annual cost-of-living adjustment in veterans benefits is an important tool which protects veterans' cash-transfer benefits against the corrosive effects of inflation. The principal programs affected by the adjustment would be compensation paid to disabled veterans, and dependency and indemnity compensation, DIC, payments made to the surviving spouses, minor children and other dependants of persons who died in service, or who died after service as a result of service-connected injuries or diseases.

The President's budget anticipates inflation to be at a 1.3-percent level at the close of this year as measured by the consumer price index, CPI, published by the Department of Labor's Bureau of Labor Statistics. If inflation is held to the 1.3-percent level, that will be the level of COLA adjustment under this legislation since it ties the increase directly to the CPI increase as measured by the Department of Labor. Whatever the CPI increase eventually turns out to be, however, veterans' and survivors' benefits payments must be protected by being increased by a like amount. The Senate has already concurred with that judgment with passage of a budget resolution which assumes an increase equal to the CPI, and which sets aside the funds necessary to finance the COLA increase envisioned by this legislation.

I ask my colleagues to support this vital legislation.

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

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

S. 2483

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Veterans' Compensation Cost-of-Living Adjustment Act of 2004''.

**SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.**

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2004, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under sections 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2004.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2004, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

**SEC. 3. PUBLICATION OF ADJUSTED RATES.**

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made

under section 215(i) of such Act during fiscal year 2005, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

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By Mr. SPECTER (by request):

S. 2484. A bill to amend title 38, United States Code, to simplify and improve pay provisions for physicians and dentists, to authorize alternate work schedules and executive pay for nurses; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I have today introduced, at the request of the Secretary of Veterans Affairs, S. 2484, a proposed bill to simplify and improve pay provisions for physicians and dentists, and to authorize alternate work schedules and executive pay for nurses. The Secretary of Veterans Affairs submitted this proposed legislation to the President of the Senate by letter dated July 18, 2003.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Committee on Veterans' Affairs. In this case, I delayed introduction of this measure so that certain provisions of the proposed legislation, which proposes extensive changes in the physician pay policies of the Department of Veterans Affairs (VA), might be reviewed by the Committee's staff, and by potentially-interested parties, prior to its introduction. I am pleased to state that many constructive ideas have been expressed, and the Committee's staff, working with the VA, the National Association of VA Physicians and Dentists, the American Federation of Government Employees, the National Federation of Federal Employees, and other representatives of VA's labor force, have identified prospective modifications to the proposed bill's text which, all appear to agree, would represent improvements over the language of the legislation forwarded to the Senate in July 2003.

Even so, the bill I introduce today is the bill which the Secretary of Veterans Affairs sent to the Committee in July 2003. I have introduced that bill so that the original ''by request'' legislation might be available to the Senate, and to the public, as part of the public record. As is always my policy with respect to any such ''by request'' legislation, I reserve the right to oppose the provisions of, as well as any amendment to, this legislation. Indeed, as I have indicated, the Committee's staff, with the assistance of VA and other interested parties, is already working on modifications to the bill as proposed by the administration.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD, together with the transmittal letter and a section-by-section analysis which accompanied it.

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

S. 2484

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2003''.

**SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

**SEC. 3. IMPROVEMENT AND SIMPLIFICATION OF PAY PROVISIONS FOR PHYSICIANS AND DENTISTS.**

(a) Chapter 74 is amended—

(1) In section 7404(b)—

(A) by striking ''(1)'' after ''(b)''.

(B) by striking the list of position grades under the caption, **"PHYSICIAN AND DENTIST SCHEDULE"** and inserting in lieu thereof the following:

''Physician grade.

Dentist grade.''

(C) by striking paragraph (2) in its entirety.

(2) In section 7404(c) by striking ''special''.

(3) By striking Subchapter III in its entirety and inserting in lieu thereof the following new sections:

Subchapter III—Pay for Physicians and Dentists

**§ 7431. Pay authority.**

(a) In order to recruit and retain highly qualified physicians and dentists in the Veterans Health Administration, the Secretary shall establish and periodically adjust the rates of pay for physicians and dentists based upon the factors specified in subsection (b). Total pay shall be benchmarked to representative salaries of non-Department physicians, dentists, and health care clinician-executives.

(b) Pay for physicians and dentists employed in the Veterans Health Administration shall have three components:

(1) Base pay.—This shall be a uniform pay band applicable nationwide. The minimum rate shall be the maximum rate for Chief grade in the Veterans Health Administration Physician and Dentist Pay Schedule in effect on the day before the date of enactment of this Act. The maximum rate may not exceed the rate of basic pay authorized by section 5316 of title 5 for Level V of the Executive Schedule. The Secretary shall adjust annually the minimum rate by the same percentage as the adjustment under section 5303 of title 5 in the rates of pay for the General Schedule, and the maximum rate in accordance with section 5318 of title 5. Administration facilities, under regulations prescribed by the Secretary, may set individual base pay anywhere within the pay band.

(2) Market pay.—This shall be a variable pay band based on geographic area, specialty, assignment, personal qualifications, and individual experience, and shall be established and adjusted locally in accordance with regulations prescribed under subsection (c). Administration facilities will set individual market pay in accordance with regulations prescribed by the Secretary. The Under Secretary for Health shall periodically review and recommend to the Secretary adjustments to the market pay band based on published healthcare workforce employment and compensation data. The Secretary may adjust the market pay band periodically based on the recommendations of the Under Secretary and in response to changing health-care labor trends.

(3) Performance pay.—

(A) There shall be a variable pay band linked to the physician's or dentist's achievement of specific corporate goals and individual performance objectives. Physicians and dentists other than those specified in subsection (f)(1) shall not be eligible for this component during the first year of appointment. The amount payable to a physician or dentist for this component may vary based on individual achievement. The performance component paid to any physician or dentist other than those specified in subsection (f)(1) will be in accordance with regulations prescribed by the Secretary and may not exceed $10,000 in a year.

(B) In accordance with regulations prescribed by the Secretary, ten percent of the benchmarked total pay for physicians and dentists specified in subsection (f)(1) shall be linked to the physician's or dentist's achievement of specific corporate goals and individual performance objectives as a performance component. Administration facilities may set the performance pay in accordance with regulations prescribed by the Secretary.

(c) Compensation paid under this subchapter shall be considered pay for all purposes, including but not limited to retirement benefits under chapters 83 and 84 of title 5, United States Code, and other benefits. Notwithstanding the preceding sentence, amounts paid for performance pay under subsection (b)(3)(A) shall not be considered pay for retirement benefits under chapters 83 and 84 of title 5, United States Code.

(d) Any decrease in pay that results from an adjustment to the market or performance component of a physician's or dentist's total compensation does not constitute an adverse action.

(e) In no case may the total amount of compensation paid to a physician or dentist under this title in any one year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3, United States Code.

(f)(1) COVERED POSITIONS.—This subsection applies to physicians and dentists in the following positions: Chiefs of Staff or equivalent facility-level and Network-level clinical management positions (including Network Clinical Service Managers), facility and Network or Regional executive positions (including Network Service Line Coordinators and Medical Center/Health Care System Directors), Central Office executive positions, and such other positions under this title as the Secretary may determine in accordance with regulations prescribed in accordance with section 7434(a).

(2) Notwithstanding the special relationships of the Veterans Health Administration with affiliated institutions under section 7302, physicians and dentists serving in covered positions and receiving compensation under this subchapter may not receive any compensation on or after the date specified in regulations issued by the Secretary, through employment or contract with, or negotiate or accept any offer of employment from, any institution or other entity that is affiliated with the VA medical center to which they are assigned, or affiliated with a VA medical center which falls under their official responsibilities. This limitation shall include receiving compensation through or from practice groups or any other entities associated with the affiliated institution(s), or from entities under contract with the affiliated institution(s). Compensation includes anything of monetary value, including but not limited to honoraria, salary, and any fringe benefits such as: tuition waiver, insurance protection, contributions to a retirement fund, payment for books, below-

market interest loans, or employee discounts. Nothing in this section precludes physicians and dentists in covered positions from holding uncompensated appointments as other than officer, director, or trustee with affiliated institutions in furtherance of section 7302.

(3) Subject to any conditions the Secretary may by regulation prescribe, the Secretary may, on a case-by-case basis, suspend or waive the limitation in paragraph (2) to an individual physician or dentist, when necessary and appropriate to carry out the purposes of section 7302, to assist communities or practice groups to meet medical needs which otherwise would not be met, or where the Secretary determines that suspension or waiver would be in the best interest of the United States. The Secretary shall make any suspension or waiver made pursuant to this paragraph in writing.

**§ 7432. Transition to new pay system.**

(a) All current special pay agreements entered into under the provisions of this subchapter in effect on the day before the date of enactment of this Act shall terminate on the date of enactment of this Act. Any physician or dentist in receipt of special pay on that date shall continue to be compensated as if such agreement were still in effect until the date specified in regulations issued by the Secretary implementing this new subchapter.

(b) Physicians and dentists appointed or reassigned on or after the date of enactment of this Act, but before implementation of this subchapter shall be compensated in accordance with sections 7404, 7405, 7433, 7434, 7435, and 7436, as applicable, in effect on the day before the date of enactment of this Act. Any such physician or dentist shall continue to be compensated at the applicable rates until such date specified in regulations issued by the Secretary implementing the new pay system. No special pay agreement will be required of any physician or dentist receiving such pay.

(c) During the period from the date of enactment of this Act through the date of implementation of this subchapter, physicians and dentists paid pursuant to this section shall be subject to paragraphs (1), (2), (4), (5), and (6) of subsection (b) of section 7438 in effect on the day before the date of enactment of this Act.

(d) The amount of pay paid under this subchapter for a physician or dentist appointed before the effective date of regulations implementing this subchapter shall be not less than the amount of base pay and special pay such physician or dentist received under this title on the day before such effective date.

(e) Special pay subject to the provisions of section 7438, as in effect before the date of enactment of this section, or subject to subsection (c), paid to Veterans Health Administration physicians and dentists appointed before the effective date of regulations implementing this subchapter and who separate after such effective date, shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5.

**§ 7433. Pay for Under Secretary for Health**

(a) Section 5314 of title 5 establishes the base pay for the Under Secretary for Health at Level III of the Executive Schedule.

(b) In addition to base pay under section 5314 of title 5, the Under Secretary for Health shall be eligible for Market Pay under section 7431(b)(2).

(c) TRANSITION. The current special pay agreement of the Under Secretary for Health entered into under the provisions of this subchapter in effect on the day before the date of enactment of this Act shall terminate on the date of enactment of this Act. The incumbent Under Secretary for Health on the date of enactment of this Act shall continue to receive special pay as if such agreement were still in effect until the date specified in regulations issued by the Secretary implementing this new subchapter. Any Under Secretary for Health appointed on or after the date of enactment of this Act, but before the date specified in regulations issued by the Secretary implementing this new subchapter, shall receive special pay in accordance with sections 7432(d)(2), 7433 and 7437(a) in effect on the day before the date of enactment of this Act.

**§ 7434. Administrative provisions.**

(a) After receiving the recommendations of the Under Secretary for Health, the Secretary, pursuant to the authority in section 7421(a), shall prescribe regulations implementing the physician and dentist pay system established in this new subchapter. Such regulations shall include the method for computing the pay for all physicians and dentists in the Veterans Health Administration under this title.

(b) Eighteen months after the Secretary issues regulations implementing this subchapter and annually thereafter for the next ten years, the Secretary shall provide to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of the authorities under this subchapter. Each report shall include:

(1) a description of the rates of pay in effect during the preceding fiscal year with a comparison to the rates in effect during the previous fiscal year by facility and by specialty;

(2) the number of physicians and dentists who left employment with the Veterans Health Administration during the preceding year;

(3) the number of unfilled physician and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and a summary of the reasons that such positions remain unfilled; and

(4) an assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

In addition, the first two reports following implementation of this subchapter shall also include a comparison of staffing levels, contract expenditures, and average salary of physicians and dentists by facility and specialty for the preceding and previous fiscal years.

(b) The title and list of sections for Subchapter III in the table of sections at the beginning of Chapter 74 is amended to read as follows:

Subchapter III—Pay for Physicians and Dentists

§ 7431. Pay authority.
§ 7432. Transition to new pay system.
§ 7433. Pay for Under Secretary for Health
§ 7434. Administrative provisions.

**SEC. 4. ALTERNATE WORK SCHEDULES.**

(a) Chapter 74 is amended by adding a new section 7456a:

**§ 7456a. Alternate work schedules.**

(a) COVERAGE.—This section applies to registered nurses appointed under this chapter.

(b) 36/40 WORK SCHEDULE.—

(1) Subject to paragraph (2), if the Secretary determines it be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work three regularly scheduled 12-hour tours of duty within a workweek shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

(2)(A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 40-hour basic workweek shall be subject to subparagraphs (B) and (C).

(B) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 36-hour tour of duty within the workweek shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within a workweek is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a day on which such nurse's regularly scheduled three 12-hour tours fall, or in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty, or in excess of 40 hours during an administrative workweek.

(ii) Except as provided in subparagraph (i), a registered nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

(3) A nurse who works a 36/40 work schedule described in this subsection who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for nine hours of absence.

(c) 7/7 WORK SCHEDULE.—

(1) Subject to paragraph (2), if the Secretary determines it be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work seven regularly scheduled 10-hour tours of duty, with seven days off duty, within a two-week pay period, shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 80 hours for the pay period.

(2)(A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 80-hour pay period shall be subject to subparagraphs (B) and (C).

(B) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 70-hour tour of duty within the pay period shall be derived by dividing the nurse's annual rate of basic pay by 1,820.

(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled 70-hour tour of duty within a pay period is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a day on which such nurse's regularly scheduled seven 10-hour tours fall, or in excess of 10 hours for any day included in the regularly scheduled 70-hour tour of duty, or in excess of 80 hours during a pay period.

(ii) Except as provided in subparagraph (i), a registered nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 10-hour tour of duty.

(3) A nurse who works a 7/7 work schedule described in this subsection who is absent on approved sick leave or annual leave during a

regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of eight hours of leave for seven hours of absence.

(d) 9-MONTH WORK SCHEDULE.—The Secretary may authorize a registered nurse appointed under section 7405, with the nurse's written consent, to work full-time for nine months with three months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year. Such employee shall be considered a .75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings. Service on this schedule shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

(f) The Secretary shall prescribe regulations for the implementation of this section.

(b) The title and list of sections for Subchapter IV in the table of sections at the beginning of Chapter 74 is amended to read as follows:

Subchapter IV—Pay for Nurses and Other Health-Care Personnel

7451. Nurses and Other Health-Care Personnel: competitive pay.
7452. Nurses and other health-care personnel: administration of pay.
7453. Nurses: additional pay.
7454. Physician assistants and other health care professionals: additional pay.
7455. Increases in rates of basic pay.
7456. Nurses: special rules for weekend duty.
7456a. Alternate work schedules.
7457. On-call pay.
7458. Recruitment and retention bonus pay.

**SEC. 5. NURSE EXECUTIVE SPECIAL PAY.**

(a) Section 7452 is amended by adding at the end thereof:

''(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary, in accordance with regulations the Secretary shall prescribe, shall pay special pay to the nurse executive at each Department health-care facility or at Central Office.

(2) Special pay paid under paragraph (1) shall be a minimum of $10,000 and a maximum of $25,000. The amount paid to each nurse executive shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the nurse executive's personal qualifications, the characteristics of the health-care facility, e.g., tertiary, single site or multi-site, nature and number of specialty care units, demonstrated recruitment and retention difficulties, and such other factors the Secretary deems appropriate.

(3) Special pay paid under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including but not limited to retirement benefits under chapters 83 and 84 of title 5, United States Code, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V.''

**SEC. 6. EFFECTIVE DATE.**

The amendments to title 38, United States Code, contained herein shall take effect on the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment.

**SEC. 7. ADMINISTRATIVE PROVISION.**

(a) Chapter 74 is amended by adding a new section 7427:

**§ 7427. Functions.**

The functions assigned to the Secretary and other officers of the Department of Veterans Affairs under this chapter are vested in their discretion.

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THE SECRETARY OF VETERANS AFFAIRS,
*Washington, DC, July 18, 2003.*

Hon. RICHARD B. CHENEY,
*President of the Senate,*
*Washington, DC.*

DEAR MR. PRESIDENT: There is transmitted herein a draft bill ''To amend title 38, United States Code, to simplify and improve pay provisions for physicians and dentists, to authorize alternate work schedules and executive pay for nurses.'' We request that it be referred to the appropriate committee for prompt consideration and enactment.

The revised physician and dentist pay system and nursing provisions were included in the President's budget. They would be effective on the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment.

ENHANCED PHYSICIAN/DENTIST PAY

This bill will greatly enhance ability of the Department of Veterans Affairs (VA) to recruit and retain the highest quality physicians and dentists to treat the Nation's veterans. It would completely revise the VA physician and dentist pay system to allow VA to adjust physician and dentist compensation levels according to market forces. The system's simplicity and flexibility would ensure that VA physician and dentist compensation levels and practices do not become outdated over time due to statutory limits. This system also would ensure that VA pay levels do not fall drastically behind while awaiting adjustment to the statutory authority. It will be a living system that adjusts to changing forces in the healthcare labor market. Generally, amounts paid under this system will be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, United States Code, and other benefits. However, amounts paid under the performance pay component will not be considered pay for retirement benefits.

VA STAFFING CHALLENGES

The VA compensation structure for physicians and dentists has not changed since 1991. The current system is extremely complex, comprising seven or eight different special pay components in addition to basic pay. The system offers insufficient flexibility to respond to the changing competitive market for many of the medical specialties, especially for the highest paid medical subspecialties. VA is no longer able to compete for these critical subspecialties. Also, although Congress increased special pay for dentists in 2000, those increases did not bring VA pay up to the levels in private dental practice. The effects of noncompetitive pay and benefits are reflected in dramatic increases in VA's scarce specialty, fee basis, and contractual expenditures.

VA is facing a critical situation. Its compensation system for physicians and dentists is unable to respond to the demands of the current market. Severe shortages of qualified physician specialists currently exist throughout the country in specialties critical to VA's health care mission, such as Anesthesiology, Radiology, Cardiology, Urology, Gastroenterology, Oncology, and Orthopedic Surgery. These shortages have driven compensation levels dramatically upward. In these shortage specialties, VA total compensation lags behind the private or academic sectors by 35 percent or more. Such compensation gaps make recruitment almost impossible and retention becomes more difficult. This legislation will enable VA to compete for physicians in the higher-paid, critical specialties and will protect other physicians' and dentists' pay. Moreover, VA will be able to offer to all physicians and dentists the prospect, now and in the future, of market-sensitive pay rates, with a portion of their compensation based on achievement of specific performance goals.

The problems with the current system are clear: special pay rates are fixed in statute, so over time their values are eroded by inflation, and VA pay eventually falls behind the market. The mechanisms available to VA to adjust physician and dentist pay are not able to respond to fluctuations in market levels of incomes for the different specialties. VA physician and dentist base salary rates increase by the amount of the annual national comparability adjustment that Federal employees generally receive; however, there is no increase in special pay amounts. Compensation for many specialties has risen significantly in the private sector, and VA pay cannot be increased to keep pace. VA is already paying the maximum authorized amounts for scarce specialists; there is no discretion under existing statute to pay more to retain employees.

Additionally, the current system does not adequately recognize disparities in pay among specialties. This results in serious pay compression and makes it difficult for VA to compete for the most highly paid specialists. For example, the difference between the average pay of non-Federal cardiologists vs. primary care practitioners is about 100 percent; in VA, the difference averages about 20 percent.

VA historically had been able to use the Federal benefits package as a major recruitment tool. To offset pay disparities with the private sector, VA publicized its benefits, such as the generous leave policies, opportunities to pursue research and education activities, and formal relationships with academic affiliates. More and more, though, the private sector offers comparable or better benefits. Some benefits widely available in the private sector exceed VA's offerings including paid relocation as a recruiting incentive, cafeteria-style benefit plans, payment for courses to acquire continuing medical education (CME) credits for license and board renewal, disability insurance, and retirement benefits.

Increased enrollment by veterans for Veterans Health Administration, VHA, services and the need for more comprehensive care to aging veteran patients will result in an increase in workload across the system over the next 5 years. Current trends indicate a steady decrease in the number of physicians and dentists VHA will be able to employ over the same period. This decrease will result from increased retirements, losses to the private sector, a shrinking dentist labor supply, and increasing difficulty in recruiting replacements. These factors will combine to create significant gaps between VHA's staffing needs and available resources for most physician specialties.

Without the flexibility to adjust pay in response to market pressures and improve its competitive position in recruiting and retaining physicians, the Department will be unable to meet the demands of its increasing workload. VHA will be forced to rely more heavily on scarce medical specialist contracts and fee basis care, which often cost more than using VHA physicians. It is critical that VHA be able to offer more competitive compensation for physicians and dentists.

PROPOSED NEW VA PHYSICIAN/DENTIST PAY SYSTEM

We propose a three-tiered system of base pay, market pay, and performance-based pay. VA would benchmark the sum of all three bands to the 50th percentile of the Association of American Medical Colleges (AAMC) Associate Professor compensation

(for physicians) and 75 percent of American Dental Association (ADA) net private practice income (for dentists). The base pay component would be increased by the annual comparability adjustments to Federal pay authorized by Executive Order.

First Tier—Base Pay. A uniform base pay band will apply to all positions in VHA, without grade distinctions. The proposed range is Chief grade, step 10 of the VA Physician/Dentist Schedule to Level V of the Executive Schedule, from roughly $110,000 to $125,000. This change will dramatically simplify hiring and employment and facilitate reassignments and position changes. Placement in this band would be based on the individual's qualifications. This band would form the floor below which no individual's pay would ever go.

Second Tier—Market Pay. The second tier, the market pay band, will be determined according to geographic area, specialty, assignment, personal qualifications and individual experience. It would be indexed to the salaries of similarly qualified non-Department physicians, dentists, and health-care executives at the entry, mid-career, and senior levels. The flexibility of this tier allows VA to keep pace with the market, both on upward and downward trends. VA would link the market band for clinicians to AAMC faculty compensation. For executives at the Chief of Staff (COS) level and above, the benchmarks would be hospital and HMO executive compensation levels. For dentists, the benchmark will be American Dental Association (ADA) net private practice income.

Third Tier—Performance Pay. The third band will be linked to performance, and would be paid for discrete achievements in quality, productivity, and support of corporate goals. The measures will be flexible and generally set locally; national objectives could also be mandated. VA facilities may authorize performance pay of up to $10,000 for physicians and dentists below the Chief of Staff (COS) level. For managers at the COS level and above, ten percent of their benchmarked pay would be at risk, and would be payable to the extent that performance goals are met. This will address a concern that has been raised by the General Accounting Office and others of a disconnect between employees' performance and their pay.

The draft bill also would prohibit senior title 38 officials at the Chief of Staff level and above from receiving any compensation, whether from employment or contract, and from accepting any offers of future employment, from medical schools affiliated with their respective VAMCs. This prohibition will reduce the risk of potential conflicts of interest, and will ensure that the Department's interests in agreements with affiliated medical schools are adequately protected. It is highly desirable to have an independent senior clinical official at each facility. VA's implementation of the bill will increase executive compensation to a level that would offset any loss of outside income resulting from this provision. In limited circumstances, the Secretary could suspend or waive this prohibition.

DETAILS OF VA'S IMPLEMENTATION PLAN

Salary benchmarks will be set at the national level and communicated to networks. Local facilities would set pay levels within a range (±10 percent of the benchmark) according to local circumstances. Any decision to set pay outside the 10–percent band will require higher-level approval.

Benchmark salaries will be set for each specialty and location, at entry, mid-career, and senior levels. Increments and graduated benchmarks will be set to reflect varying levels of experience and to provide for reasonable income growth over a period of time.

VA will use ADA net private practice income to set VA dentist salary benchmarks. About 93 percent of all practicing dentists are employed in private practice, so VA's primary competition in the marketplace is private practice income.

Specific amounts of each tier and the total payable for each clinician will be set at the local level. This continues the VA practice of local pay setting based on national policy (used for physician and dentist special pay, nurse locality pay system, and special salary rates):

This proposal will greatly enhance VA's ability to compete for the full range of skilled medical and dental services at the most reasonable cost. VA will be able to offer competitive compensation to full-time, part-time, or occasional staff, or pay on contract, according to the most clinically appropriate and efficient option.

This proposed physician and dentist pay aligns with the President's budget and would be effective on the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment.

EXAMPLES

An example of how this system will work for Internal Medicine:

VA internist with 10 years of experience, 2003: $142,682; AAMC Associate Professor median salary, 2001–2002: $142,000; Benchmark for VA Salary (±10% of AAMC): $127,800–156,200; Targeted Increase: $0–$13,518.

An example of how this system will work for Therapeutic Radiologists:

VA radiologist with 10 years of experience, 2003: $190,682; AAMC Associate Professor median salary, 2001–2002: $248,000; Benchmark for VA Salary (±10% of AAMC): $223,200–272,800; Targeted Increase: $32,518–82,118.

An example of how this system will work for General Dentists:

VA general dentist with 10 years of experience, 2003: $131,682; ADA net private practice income (minus benefits), 2002: $134,928; Benchmark for VA Salary (±10% of ADA): $121,435–148,421; Targeted Increase $0–$16,739.

ESTIMATED COSTS/SAVINGS

VA estimates the first year costs to be $69.42 million, with ten-year costs of $1.59 billion. There are expected savings from productivity and the avoidance of costly specialty contracts resulting from more competitive pay. The net first year costs are $48.47 million, with net ten-years costs of $636.25 million. A detailed explanation is in the attached charts.

ENHANCEMENTS FOR NURSES

Over the next several years the projected increase in the number of aging veterans and increased enrollment in the VA healthcare system by veterans of all ages will increase workload across the VA healthcare system. Between 2000 and 2010, the number of veterans age 75 and above will increase from 4 million to 4.5 million and within that number, those veterans age 85 and older will triple from 422,000 to 1.3 million. Veteran enrollees in the VA healthcare system will increase from approximately 6 million in FY 2002, to approximately 7.75 million in FY 2007. This increasing and aging population of veterans will exhibit higher comorbidity and require more comprehensive care both as inpatients and as outpatients.

At the same time, national nursing leaders and healthcare organizations project a shortage of registered nurses that will be unlike any experienced in the past. Changes in healthcare delivery requiring larger numbers of professional nurses to perform increasingly complex functions in hospitals and the community has heightened the demand for professional nurses. Given the aging of the current registered nurse workforce (average age nationally, 45.2 yrs., in VA, 46 yrs.), and the decreasing number of students who choose nursing as a career, the future availability of professional, registered nurses (RN) will be insufficient to meet our national healthcare needs. Negative perceptions of nursing as a profession (i.e., perceived negative work environment and pay inequities between nurses and a wide range of alternative career options that require less education and have less responsibility) have exacerbated this situation. VA already is experiencing some staffing difficulties. VA's nurse vacancy and turnover rates have greatly increased since 1998. VA must better position itself to attract the nurses to meet current and future healthcare needs.

Nurse shortages, complex healthcare environments and growing administrative demands require highly skilled nurse executives at facility and national levels with the knowledge and experience to develop responsive care delivery models in an ever-changing healthcare environment. VA nursing leadership must be highly qualified and capable of implementing cutting edge, innovative changes. Current VA pay for nurse executives is not comparable to private sector pay and perquisites. As a result, VA often is not in a position to hire and retain nurse executives with exceptional skills. The current pay structure offers little or no incentive for current VA nurse executives and potential nurse leaders to take on progressively more responsible and complex assignments. Moreover, the current VA pay structure is generally not attractive to highly skilled and experienced non-VA nurse executives.

Approximately 55 percent of all VA Nurse Executives are eligible for retirement by 2005; 69 percent will be eligible by 2008. In addition, 35 percent of all current VA registered nurses are eligible to retire by 2005. When coupled with the national shortage, this potential loss of nurses could jeopardize VA's ability to accomplish its healthcare mission.

Thus, we propose legislation enabling VA medical centers (VAMCs) to offer flexible tours, and establishing a nurse executive special pay program.

FLEXIBLE TOURS

The proposed legislation would authorize VA to offer registered nurses the following flexible tours:

(1) three 12–hour tours (36 hours) in a workweek paid as 40 hours;

(2) 7 ten-hour days/7 days off in a pay period, with pay for 80 hours;

(3) 9 months of work with 3 months off, with pay apportioned over a 12-month period.

Inflexibility in work schedules is a major cause of dissatisfaction in nurse employment. A 2000 survey conducted by the American Organization of Nurse Executives (AONE), found that after salary, the top benefit sought by nurses was ''flexible scheduling and control over shifts.'' Providing different options for scheduling would be a way of bringing more nurses into the workplace and retaining their services.

VAMCs across the country must compete in local employment markets that offer a variety of flexible working schedules and pay practices to professional nurses. Such options are popular among nurses because it allows them to accommodate individual lifestyles and personal obligations. The proposed changes would allow VAMCs to implement flexible pay and work-schedule options common in many job markets. The ability to offer options comparable to those offered by their competitors would enhance VAMCs'

ability to remain competitive employers. These flexible nurse tour proposals align with the President's budget and would be effective on the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment.

NURSE EXECUTIVE SPECIAL PAY

The proposed legislation also would authorize VA to approve special pay to the nurse executive at each VA medical center or VA Central Office. The special pay would range from a minimum of $10,000 to a maximum of $25,000, based on factors such as the grade of the nurse executive, the scope and complexity of the nurse executive position, the nurse executive's personal qualifications, the characteristics of the of the healthcare facility, e.g., tertiary, single site or multisite, nature and number of specialty care units, demonstrated recruitment and retention difficulties, and such other factors as the Secretary deems appropriate.

This proposed nurse executive pay aligns with the President's budget and would be effective on the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment.

There are significant inadequacies in the VA nurse locality pay system (LPS) as it relates to nurse executive compensation. There are difficulties in obtaining comparative survey data on non-VA nurse executive positions to use in making an informed determination concerning locality pay. Non-VA employers often do not cooperate in the survey process. Nurse executive positions are often one-of-a-kind positions making it difficult to match VA and non-VA jobs. Non-VA employers typically do not include nurse executives in compensation surveys. With the organizational changes and scope of responsibilities changes for nurse executives occurring in both VA and non-VA healthcare facilities, lines of authority and levels of responsibilities for executive nurses are changing. Thus, job and pay matching for nurse executives at VAMCs and non-VA healthcare facilities is extremely difficult. Furthermore, nurse executives work in a national labor market, or at least a regional one. LPS compares jobs on a local basis. Another major problem is that VA nurse executives are capped at Level V of the Executive Schedule (EL–V), $125,400. There is no such cap in the non-VA healthcare industry. The EL–V rate is no longer competitive with non-VA nurse executive positions. Moreover, non-VA employers negotiate nurse executive compensation as a total compensation package, often including bonuses and other incentives in addition to base pay. VA is unable to do that.

The proposal derives from a recommendation of the VHA Future Nursing Workforce Planning Group. This group, composed of Medical Center Administrators, Nurse Executives, Network Managers and clinicians, has identified the $10,000–$25,000 range as the amount that most commonly would mirror salary and/or community based prerequisites of non-VA nurse executives, while not making VA the pay leader within the community. It is also consistent with the range of special pay currently available to VA physician executives.

Responsibilities of VA nurse executives are rapidly changing and becoming more varied and complex. VA's pay system for them must address this growing variety and complexity.

COSTS

FLEXIBLE TOURS

(1) Three 12-hour tours (36 hours) paid as 40 hours.

Assumptions: Based on a 36 hour work week/72 hours per pay period for selected RNs. 40 hours/wk (Full-time) − 36 hours/wk (Full-time requested) = 4.

Average VA RN hourly wage = $29.02 (using FY02 avg RN salary = $56,679, adjusted by 3.2% annual pay increase = $60,364, divided by 2,080).

Cost is 4 hours per week/208 hours per year per nurse.

Cost per RN per week: 4 $29.02 = $116.08; Cost per RN per year: 208 $29.02 = $6036.

Based on an estimated 25 nurses per facility, the cost would be as follows:

25 (RNs) $6036 = $150,900; 162 (VAMCs) $150,900 = $24.4 million.

FY 2004 costs would be $12,222,900 (half-year implementation).

Costs in future years increased by 3.2%.

[In millions of dollars]

| | |
|---|---|
| FY05 | $25.22 |
| FY06 | 26.03 |
| FY07 | 26.86 |
| FY08 | 27.72 |
| FY09 | 28.61 |
| FY10 | 29.53 |
| FY11 | 30.47 |
| FY12 | 31.45 |
| FY13 | 32.45 |
| Total (over 10 years) | $270.56 |

(2) 9 months of work with 3 months off, with pay apportioned over a 12-month period.

This is an authorization to pay RNs who are hired under this provision less than full time pay for full time worked. RNs would work a full nine months prior to pay continuance for 3 months. Registered nurses hired under this provision would reflect the following:

1. Hired as part-time employees .75 FTE.
2. Each would work full-time (40 hr/wk) for nine months.
3. While working full time for 9 months they would agree to be paid .75 salary.
4. While not working for a period of 3 months, they would continue to be paid .75 salary.

VAMCs would determine when such appointments would begin, based on regional needs (e.g. higher winter workload in the sunbelt) and community-based competitive factors.

There are no costs associated with this proposal. It is estimated that VAMCs will derive fiscal benefits from deferring 25 percent of pay for full-time work over a 9-month period.

(3) 7 ten-hour days/7 days off, with pay for 80 hours.

Assumptions: Based on paying an RN who works 70 hours as if 80 hours are worked. Average hourly wage = $29.02 (using FY02 avg RN salary = $56,679, adjusted by 3.2% annual pay increase = $60,364, divided by 2,080).

Cost is 10 hours per pay period/260 hours per year.

Cost per RN per pay period: 10 $29.02 = $290.20; Cost per RN per year 260 $29.02 = $7,545.

Based on an estimated 15 nurses per facility, the cost would be as follows:

15 (RNs) $7,545 = $113,175; 162 (VAMCs) $113,175= $18,334,350.

FY 2004 costs would be $9,167,175 (half-year implementation).

Costs in future years increased by 3.2%.

[In millions of dollars]

| | |
|---|---|
| FY05 | $18.92 |
| FY06 | 19.53 |
| FY07 | 20.15 |
| FY08 | 20.80 |
| FY09 | 21.46 |
| FY10 | 22.15 |
| FY11 | 22.86 |
| FY12 | 23.59 |
| FY13 | 24.34 |
| Total (over 10 years) | 203.00 |

NURSE EXECUTIVE PAY

Assumptions: One nurse executive at each of the 162 VHA medical centers would be authorized to receive the executive special pay, [Note: the estimate below is a maximum estimate since in any given year there will be a varying number of nurse executive vacancies. On board strength is estimated to average 150 nurse executives. This number also includes 5 nurse executives in the VACO Office of Nursing Services]. The average per executive would be $17,500, $2.62 million per year for 150 executives.

| *Year* | *Cost (millions)* |
|---|---|
| 2004 | $1.31 |
| (Based on April 4, 2004 effective date): | |
| 2005 | 2.62 |
| 2006 | 2.62 |
| 2007 | 2.62 |
| 2008 | 2.62 |
| 2009 | 2.62 |
| 2010 | 2.62 |
| 2011 | 2.62 |
| 2012 | 2.62 |
| 2013 | 2.62 |
| Total | 24.89 |

The Office of Management and Budget advises that the submission of this draft bill is in accord with the program of the President.

Sincerely yours,

ANTHONY J. PRINCIPI.

| | Cost estimate | |
|---|---|---|
| | Direct costs for current staff | Savings from productivity |
| Cost for physicians | $124,488,837 | $28,389,272 |
| Cost for dentists | 4,996,680 | 703,166 |
| Cost for management | 9,354,318 | 0 |
| Total | 138,839,835 | 29,092,438 |

10-YEAR PROJECTIONS

[First year cost projections assume implementation in 3rd quarter of FY 2004 [1]]

| | Cost | Productivity savings | Contract/fee savings [2] | Net cost |
|---|---|---|---|---|
| FY 2004 | $69,419,917 | $14,546,219 | $6,405,709 | $48,467,990 |
| 2005 | 144,254,588 | 30,227,043 | 19,217,127 | 94,810,419 |

10-YEAR PROJECTIONS—Continued

[First year cost projections assume implementation in 3rd quarter of FY 2004 [1]]

| | Cost | Productivity savings | Contract/fee savings [2] | Net cost |
|---|---|---|---|---|
| 2006 | 149,880,517 | 31,405,898 | 32,028,544 | 86,446,075 |
| 2007 | 155,725,857 | 32,630,728 | 44,839,962 | 78,255,168 |
| 2008 | 161,799,166 | 33,903,326 | 57,651,380 | 70,244,460 |
| 2009 | 168,109,333 | 35,225,556 | 69,656,718 | 63,227,060 |
| 2010 | 174,665,597 | 36,599,352 | 80,855,976 | 57,210,269 |
| 2011 | 181,477,556 | 38,026,727 | 92,055,235 | 51,395,594 |
| 2012 | 188,555,180 | 39,509,769 | 103,254,493 | 45,790,918 |
| 2013 | 195,908,832 | 41,050,650 | 114,453,752 | 40,404,430 |
| Total | 1,589,796,546 | 333,125,267 | 620,418,896 | 636,252,382 |

[1] Assuming annual rate of inflation of 3.9 percent.

[2] Savings based on difference between cost of providing services in-house vs. contact and fee basis. See attached sheet for calculation of estimated total contract savings ($112 million over 10 years). Savings in contract expenditures based on realizing 10 percent of total savings per year. Savings in fee basis expenditures ($8.05 million) based on 5 percent reduction per year over 5 years.

Note: Savings in 2013 do not equal total due to crediting only half-year savings in first year.

CONTRACT SAVINGS COMPUTATION SHEET

| Clinical specialty | Current active vacancies | FY 2001 contract costs | New VA pay | Estimated average contract cost per FTE [1] | Estimated contract FTE [2] | Estimated savings from contract replacement [3] |
|---|---|---|---|---|---|---|
| Allergy/Immunology | 2.4 | $393,353 | $134,629 | $265,724 | 1.48 | $194,061 |
| Anesthesiology | 89.5 | 18,040,153 | 216,469 | 387,500 | 46.56 | 7,962,388 |
| Cardiology | 58.1 | 17,556,339 | 183,928 | 423,031 | 41.50 | 9,923,087 |
| Dermatology | 18.125 | 19,411,073 | 173,538 | 352,366 | 55.09 | 9,851,230 |
| Emergency Medicine | 20 | 8,322,130 | 174,949 | 216,824 | 38.38 | 1,607,245 |
| Endocrinology | 6.1 | 186,985 | 133,695 | 181,776 | 1.03 | 49,458 |
| Gastroenterology | 45.4 | 1,902,181 | 156,510 | 329,111 | 5.78 | 997,592 |
| General Internal Medicine | 191.225 | 113,586,127 | 136,250 | 160,058 | 709.66 | 16,895,004 |
| General Surgery | 31.25 | 12,232,562 | 194,361 | 277,702 | 44.05 | 3,671,108 |
| Geriatrics | 11.375 | 5,300,674 | 132,003 | 167,694 | 31.61 | 1,128,177 |
| Gynecology (OB/Gyn—Other) | 1.9 | 2,646,880 | 176,359 | 206,943 | 12.79 | 391,181 |
| Hematology/Oncology | 29.625 | 3,604,702 | 140,164 | 385,606 | 9.35 | 2,294,428 |
| Infectious Diseases | 18.505 | 597,046 | 135,196 | 199,761 | 2.99 | 192,972 |
| Nephrology | 7 | 4,561,735 | 139,617 | 275,311 | 16.57 | 2,248,366 |
| Neurology | 22.25 | 2,182,569 | 133,314 | 212,216 | 10.28 | 811,484 |
| Neurosurgery | 7.175 | 3,786,867 | 249,601 | 502,913 | 7.53 | 1,907,405 |
| Ophthalmology | 17.1 | 4,315,444 | 171,094 | 301,451 | 14.32 | 1,866,135 |
| Orthopedic Surgery | 22.875 | 6,600,581 | 242,825 | 444,105 | 14.86 | 2,991.556 |
| Otolaryngology | 11.55 | 962.887 | 190.567 | 304.389 | 3.16 | 360.058 |
| Pathology | 24.875 | 10,832,884 | 145,778 | 289,235 | 37.45 | 5,372,989 |
| Physical Medicine & Rehab | 20.575 | 969,748 | 142,976 | 234,605 | 4.13 | 378,752 |
| Plastic Surgery | 5.125 | 840,228 | 223,465 | 472,475 | 1.78 | 442,828 |
| Preventive Medicine | 1 | | 145,807 | N/A | N/A | N/A |
| Psychiatry | 110.175 | 4,350,983 | 146,887 | 161,440 | 26.95 | 392,213 |
| Pulmonology | 16.975 | 1,162,023 | 138,667 | 236,298 | 4.92 | 480,114 |
| Radiology | 100.2 | 64,119,853 | 220,662 | 450,000 | 142.49 | 32,678,042 |
| Rheumatology | 9.4 | 165,564 | 133,563 | 212,183 | 0.78 | 61,347 |
| Thoracic/Cardiovasc Surgery | 10.375 | 15,826,215 | 247,602 | 375,385 | 42.16 | 5,387,326 |
| Urology | 34.75 | 3,597,512 | 200,690 | 337,144 | 10.67 | 1,456,039 |
| Total | 944.905 | 328,055,298 | | | | 111,992,584 |

[1] Estimated unit FTE cost based on MGMA Physician Compensation Report, 2002 (based on 2001 data); actual contract FTE costs may be higher.

[2] Contract FTE constructed by dividing total contract expenditures by estimated unit FTE cost.

[3] Savings based on difference between contract costs per contract FTE and VA employee costs for same FTE, or actual contract expenditures, whichever is lower.

ANALYSIS OF DRAFT BILL

The first section provides a title for the bill, the ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2003''.

Section 2 specifies that, unless otherwise expressly provided, references throughout are to title 38, United States Code.

Section 3 establishes a new pay system for VA physicians and dentists.

Section 3(a)(1) amends section 7404(b)(1) to revise the Physician and Dentist Schedule such that there now are two grades: Physician grade and Dentist grade. It strikes paragraph (2) as a conforming amendment as the Director and Executive grades no longer exist.

Section 3(a)(2) strikes ''special'' before ''pay'' because Section 3(a)(3) repeals the special pay provisions, but the individuals concerned will still be paid under subchapter Ill.

Section 3(a)(3) strikes existing Subchapter III in its entirety and inserts in lieu thereof new sections 7431–7434:

Section 7431 establishes a new pay system for VHA physicians and dentists composed of three tiers, base pay, market pay, and performance pay. It additionally provides that compensation under the new system shall be considered pay for all purposes, that downward adjustments do not constitute adverse actions, and that total pay may not exceed that of the President. In order to reduce the risk of potential conflicts of interest, this section also would prohibit certain senior title 38 officials from receiving any compensation, whether from employment or contract, from medical schools affiliated with their respective VAMCs.

Section 7432 provides for transition to the new pay system: written special pay agreements are terminated, but current pay levels continue until the new provisions are implemented on a date to be specified in VA regulations. Upon conversion to the new system, incumbent employees will be paid at least as much as they were paid under the old system. All pay under the new system, except performance pay, as well as special pay under the previous system, is fully creditable in computing retirement benefits.

Section 7433 contains provisions for pay for the Under Secretary for Health. In addition to base pay at Executive Level III, the Under Secretary would be eligible for market pay under the new system. The current Under Secretary's written special pay agreements are terminated, but would continue to be paid at current pay levels until the new provisions are implemented on a date to be specified in VA regulations. If a new Under Secretary were to be appointed during the interim, he/she would be paid under current law until a date to be specified in VA regulations.

Section 7434 contains several administrative provisions: (a) the Secretary is authorized to prescribe regulations; (b) current employees will not have their pay reduced when they move to the new system; (c) beginning eighteen months after issuance of regulations implementing the new pay system and annually thereafter for the next ten years, the Secretary would be required to provide a report to the Committees on Veterans' Affairs of the Senate and House of Representatives on the implementation of the new system.

Section 3(b) makes a conforming amendment to the title and list of sections for Subchapter III in the table of sections at the beginning of Chapter 74.

Section 4 provides for alternate work schedules.

Section 4(a) amends Chapter 74 to add a new section 7456a, Alternate Work Schedules:

Section 7456(a) specifies that this section applies to chapter 74 registered nurses.

Section 7456(b)(1) authorizes the Secretary, when necessary to obtain or retain registered nurses at any Department healthcare facility, to provide for such nurses to work three regularly scheduled 12-hour tours of duty within a workweek, and for such tour to be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) a full 40-hour basic workweek.

Section 7456(b)(2) provides the formula for determining the hourly rate, and sets forth rules for overtime pay.

Section 7456(c)(1) authorizes the Secretary, when necessary to obtain or retain registered nurses at any Department healthcare facility, to provide for such nurses to

work seven regularly scheduled 10-hour tours of duty, with seven days off duty, within a two-week pay period, and for such tour to be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) a full 80-hour pay period.

Section 7456(c)(2) provides the formula for determining the hourly rate, and sets forth rules for overtime pay.

Section 7456(d)(1) authorizes the Secretary to provide for nurses to work full-time for 9 months with 3 months off, and be paid at 75 percent of the full-time rate over a full 12-month period over a fiscal year, and for employees working such tours to be considered .75 full-time equivalent employees. Service on this schedule shall be considered part-time service for purposes of computing retirement benefits.

Section 7456(e) provides the formula for determining leave charges for nurses working 36/40 or 7/7 work schedules.

Section 7456(f) directs the Secretary to prescribe implementing regulations.

Section 4(b) makes a conforming amendment to the title and list of sections for Subchapter IV in the table of sections at the beginning of Chapter 74 to add new section 7456a.

Section 5 establishes special pay for VA nurse executives.

Section 5(a) adds a new subsection (f) to section 7452:

Subsection (f)(1) authorizes, when necessary to recruit or retain nurse executives, special pay for the nurse executive at each Department health-care facility or at Central Office.

Subsection (f)(2) sets the range of special pay to be a minimum of $10,000 and a maximum of $25,000, and specifies the factors in determining the amount paid to each nurse executive.

Subsection (f)(3) specifies that special pay is in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and that it is be considered pay for all purposes.

Section 6 sets the effective date for rates of pay established pursuant to section 7431, as added by section 3(a), and sections 4 and 5, as the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment. All other provisions are effective on the date of enactment.

Section 7 adds an administrative provision concerning functions under chapter 74. It provides that functions of the Secretary and other Department officers under chapter 74 are vested in their discretion. The purpose of this provision is to make clear that the exercise of those functions 5 U.S.C. 701(a)(2) exempts the exercise of those functions from judicial review under the Administrative Procedures Act.

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By Mr. SPECTER (by request):

S. 2485. A bill to amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, as chairman of the Committee on Veterans' Affairs, I have introduced today, at the request of the Secretary of Veterans' Affairs, S. 2485, a proposed bill to modify provisions of law relating to the administration of real property assets by the Department of Veterans' Affairs, VA. The Secretary of Veterans' Affairs submitted the elements of this proposed legislation to the President of the Senate by letters dated August 15, 2003, and October 3, 2003.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Committee on Veterans' Affairs. In this case, however, I have departed from my usual course of simply introducing administration-advanced measures as forwarded to me. Measures that the administration forwarded in August and October, 2003, relate to similar subject matter, namely the administration of VA-controlled real property assets. It is my belief that these provisions, inasmuch as they are related, might be considered in a more orderly fashion as parts of a single piece of legislation. To facilitate that, I have included sections 401–403 of the administration's August 15, 2003, request, and sections 5–6 of the administration's October 3, 2003, request, in the single bill which I have introduced today. As is always my policy with respect to any such ''by request'' legislation, I reserve the right to oppose the provisions of, as well as any amendment to, this legislation.

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

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

S. 2485

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

**SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.**

(a) SHORT TITLE.—This Act may be cited as the ''Department of Veterans Affairs Real Property and Facilities Management Improvement Act of 2004''.

(b) REFERENCES TO TITLE 38 UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

**SEC. 2. AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NON-RECURRING MAINTENANCE PROJECT.**

Section 8109 is amended by adding at the end the following new subsection:

''(j) Funds in a construction account or capital account that are available for a construction project or non-recurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to such project.''.

**SEC. 3. IMPROVEMENTS OF ENHANCED-USE LEASE AUTHORITIES.**

(a) BUSINESS PLAN CRITERIA.—Section 8162 is amended—

(1) in subsection (a)(2)(B), by striking ''the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services'' and inserting ''one of the Under Secretaries for applying the consideration under such a lease to the programs and activities of the Department''; and

(2) in subsection (b)(4)(A), by striking ''on the leased property''.

(b) CONSIDERATION OF PROPOSALS FOR LEASES.—(1) Section 8163 is amended—

(A) in subsection (a), by striking the first sentence and inserting the following new sentence: ''If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease.'';

(B) in subsection (b), by striking ''of the proposed designation and of the hearing'' in the matter preceding paragraph (1) and inserting ''on the proposed lease and the hearing to the congressional veterans' affairs committees and to the public''; and

(C) in subsection (c)—

(i) in paragraph (1)—

(I) by striking ''to designate the property involved'' and inserting ''to enter into an enhanced-use lease of the property involved''; and

(II) by striking ''to so designate the property'' and inserting ''to enter into the lease'';

(ii) in paragraph (2), by striking ''90-day'' and inserting ''45-day''; and

(iii) by striking paragraph (4).

(2)(A) The heading of such section is amended to read as follows:

**''§ 8163. Proposals for property to be leased''.**

(B) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8163 and inserting the following new item:

''8163. Proposals for property to be leased.''.

(c) DISPOSAL AUTHORITY.—Section 8164 is amended—

(1) in subsection (a)—

(A) by striking ''by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b)''; and

(B) by striking the last sentence;

(2) in subsection (b)—

(A) by striking ''and the Administrator of General Services jointly determine'' and inserting ''determines''; and

(B) by striking ''and the Administrator consider'' and inserting ''considers''; and

(3) in subsection (c), by striking ''90 days'' and inserting ''45 days''.

(d) USE OF PROCEEDS.—Section 8165 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''Funds received'' and inserting ''Except as provided in paragraph (2), funds received'';

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following new paragraph (2):

''(2) Funds received by the Department under an enhanced-use lease implementing a business plan proposed by the Under Secretary for Benefits or the Under Secretary for Memorial Affairs and remaining after any deduction from such funds under subsection (b) shall be credited to applicable appropriations of the Veterans Benefits Administration or National Cemetery Administration, as the case may be.''; and

(D) in paragraph (3), as so redesignated, by striking ''nursing home revolving fund'' and inserting ''Capital Asset Fund established under section 8122A of this title'';

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)''

(B) in paragraph (1), as so designated, by striking ''for that fiscal year''; and

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

''(2) The Secretary may also deduct from the proceeds of any enhanced-use lease an amount to reimburse applicable appropriations of the Department for any expenses incurred by the Secretary in the development

of additional enhanced-use leases. Amounts so deducted shall be utilized to reimburse such appropriations.''; and

(3) by striking subsection (c).

**SEC. 4. DISPOSAL OF REAL PROPERTY OF THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) IN GENERAL.—(1) Subchapter II of chapter 81 is amended by inserting after section 8122 the following new section:

**''§ 8122A. Disposal of real property**

''(a) IN GENERAL.—(1) To the extent provided in advance in appropriations Acts, the Secretary may, in accordance with this section and sections 8122 and 8164 of this title, dispose of real property of the Department, including land and structures and equipment associated with such property, that is under the jurisdiction or control of the Secretary by—

''(A) transfer to or exchange with another department or agency of the Federal Government;

''(B) conveyance to or exchange with a State or a political subdivision of a State, an Indian tribe, or other public entity; or

''(C) conveyance to or exchange with any private person or entity.

''(2) The Secretary may exercise the authority in paragraph (1) notwithstanding the following provisions of law:

''(A) Sections 521, 522, and 541 through 545 of title 40.

''(B) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

''(3) In any transfer, exchange, or conveyance of real property under this subsection, the Secretary shall obtain consideration in an amount equal to the fair market value of the property, as determined by the Secretary.

''(b) TREATMENT OF PROCEEDS.—Proceeds from the transfer, exchange, or conveyance of real property under subsection (a) shall be deposited in the Capital Asset Fund under subsection (c).

''(c) CAPITAL ASSET FUND.—There is established on the books of the Treasury of the United States a revolving fund known as the Capital Asset Fund (in this section referred to as the 'Fund').

''(d) ELEMENTS OF FUND.—The Fund shall consist of the following:

''(1) Amounts authorized to be appropriated to the Fund.

''(2) Proceeds from the transfer, exchange, or conveyance of real property under subsection (a) that are deposited in the Fund under subsection (b).

''(3) Funds to be deposited in the Fund under section 8165(a)(3) of this title.

''(4) Any other amounts specified for transfer to or deposit in the Fund by law.

''(e) USE OF AMOUNTS IN FUND.—Subject to the provisions of appropriations Acts, amounts in the Fund shall be available for purposes as follows and in the following order of priority:

''(1) For costs of the Department in disposing of real property, including costs associated with demolition, environmental clean-up, maintenance and repair, improvements to facilitate disposal, and associated administrative expenses.

''(2) For costs of the Department associated with proposed disposals of real property of the Department.

''(3) For costs of non-recurring capital projects of the Department.

''(f) REPORTS.—The Secretary shall include with the budget justification documents submitted to Congress each year with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31) a report setting forth the following:

''(1) A statement of each disposal of real property to be undertaken in such fiscal year that is valued in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title.

''(2) A description of each disposal of real property that was completed in the fiscal year ending in the year before such report is submitted.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8122 the following new item:

''8122A. Disposal of real property.''.

(b) CONFORMING AMENDMENT.—Section 8164(a) is amended in the second sentence by inserting ''or 1822A'' after ''section 8122''.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Department of Veterans Affairs for fiscal year 2005, $10,000,000 for deposit in the Capital Asset Fund under section 1822A(c) of title 38, United States Code (as added by subsection (a)).

**SEC. 5. MODIFICATION OF OTHER REAL PROPERTY DISPOSAL AUTHORITIES.**

(a) GENERAL LIMITATIONS ON DISPOSAL.—Paragraph (2) of subsection (a) of section 8122 is amended to read as follows:

''(2) Except as provided in paragraph (3) of this subsection, the Secretary may not during any fiscal year dispose of real property owned by the United States and under the jurisdiction and control of the Secretary that has an estimated value in excess of the major medical facility project threshold specified in subsection 8104(a)(3)(A) of this title unless—

''(A) the disposal is described in the budget justification documents submitted to Congress each year with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31);

''(B) the Department receives consideration for the real property equal to the fair market value of the property, as determined by the Secretary; and

''(C) the net proceeds of the disposal are deposited in the Capital Asset Fund under section 8122A(c) of this title.''.

(b) DISPOSAL PROCEDURES.—Subsection (d) of such section is amended—

(1) by inserting ''(1)'' after ''(d)''; and

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

''(2)(A) In the case of property (including land and structures and equipment associated with such property) that has an estimated value less than the major medical facility project threshold specified in section 8104(a)(3)(A) of this title, the Secretary may dispose of the property if—

''(i) the Secretary notifies the Administrator of General Services of an intent to dispose of the property; and

''(ii) a period of 30 days elapses after notice under clause (i) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property.

''(B) In disposing of property under subparagraph (A), the Secretary shall publish a notice of sale in the real estate section of a local newspaper of general circulation serving the market in which the property is located.

''(3) In the case of property (including land and structures and equipment associated with such property) that has an estimated value in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title, the Secretary may dispose of the property if—

''(A) the Secretary complies with subsection (a)(2) with respect to the property;

''(B) the Secretary—

''(i) notifies the Administrator of General Services of an intent to dispose of the property;

''(ii) publishes in the Federal Register notice of an intent to dispose of the property; and

''(iii) notifies the committees of an intent to dispose of the property;

''(C) a period of 30 days elapses after notice under subparagraph (B)(i) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property; and

''(D) a period of 60 days elapses after notice under subparagraph (B)(iii).''.

**SEC. 6. TERMINATION OF NURSING HOME REVOLVING FUND.**

(a) TERMINATION.—(1) Section 8116 is repealed.

(2) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8116.

(b) CONFORMING AMENDMENT.—Section 8165(a)(3), as redesignated by section 3(d)(1)(D) of this Act, is further amended by striking ''nursing home revolving fund'' and inserting ''Capital Asset Fund under section 1822A of this title''.

(c) TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND.—Any unobligated balances in the nursing home revolving under section 8116 of title 38, United States Code, as of the date of the enactment of this Act shall be deposited in the Capital Asset Fund under section 8122A of title 38, United States Code (as added by section 4(a) of this Act).

**SEC. 7. INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUND TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS.**

Section 8104 is amended by adding at the end the following new subsection:

''(g) The limitation specified in subsection (f) shall not apply to projects for which funds have already been authorized by law in accordance with subsection (a)(2).''.

**SEC. 8. LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY.**

(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

**''§ 2412. Lease of land and buildings**

''(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

''(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

''(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

''(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

''(d) NOTICE.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

''(e) NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.—(1) There is established on the book of the Treasury an account to be known as the 'National Cemetery Administration Facilities Operation

Fund' (in this section referred to as the 'Fund').

''(2) The Fund shall consist of the following:

''(A) Amounts authorized to be appropriated to the Fund.

''(B) Proceeds from the lease of land or buildings under this section.

''(C) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

''(D) Any other amounts authorized for deposit in the Fund by law.

''(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

''(4) Amounts in the Fund shall remain available until expended.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2412. Lease of land and buildings.''.

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By Mr. SPECTER (for himself and Ms. MURKOWSKI) (by request):

S. 2486. A bill to amend title 38, United States Code, to improve and enhance education, housing, employment, medical, and other benefits for veterans and to improve and extend certain authorities relating to the administration of benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SPECTER. Mr. President, I have sought recognition to comment on legislation which I have introduced today which would, among other things, improve the education and housing benefits of our Nation's veterans. Education and housing benefits administered by the Department of Veterans Affairs, VA, were the essence of one of the most significant pieces of legislation in the 20th Century, the 1944 GI Bill of Rights. Sixty years later, the Veterans' Benefits Improvements Act of 2004, which I introduce today, would build on that historic legacy.

Section 101 of the bill would allow for significant increases in Montgomery GI Bill, MGIB, educational assistance benefits by expanding on ''buy up'' legislation which I authored in 1999 and which was enacted as part of Public Law 106–419. Under the provisions of the existing ''buy up'' program, active duty service members can increase their monthly MGIB ''pay-out'' by making voluntary in-service contributions of up to $600 in addition to the $1,200 aggregate contribution which is made to secure basic eligibility for MGIB benefits. In return for this added $600 ''investment,'' a veteran can secure an increase in his or her monthly MGIB benefit of $150 per month. Assuming the veteran completes a 36-month course of full-time study, the added benefit amount to $5,400, an effective yield of $9 for every added dollar contributed. The legislation which I have introduced today would expand the ''buy-up'' program by allowing service members to voluntarily contribute more—up to $2000—to the program, in return for which they could ''buy'' up to an additional $18,000—or $500 per month over 36 months—in potential MGIB benefits. A service member who contributes the full $2,000 could thus increase his or her aggregate MGIB entitlement to $53,460, the amount that the College Board, an association of over 4,000 colleges and other educational organizations, estimates is necessary today to finance the average cost of tuition, fees, books, room and board, transportation, and expenses for a resident student at a four-year public institution of higher learning.

Section 102 of this bill would authorize VA to carry out a 4-year pilot program under which veterans could extend, for up to 2 years, their eligibility period to use MGIB education benefits. Current law states, in summary, that a veteran is entitled to 36 months of MGIB benefit, but only during a 10-year ''delimiting period'' beginning on the date of discharge from service. Section 102 of my bill would allow a veteran with a ''left-over'' entitlement to apply for a one-time extension of the delimiting period so that he or she might gain vocational or job readiness skills necessary to obtain or maintain employment. I believe that as the workforce evolves, so too must workers in order to stay competitive. Providing veterans with some flexibility in the use of a benefit they have earned—at a point in life beyond the ''delimiting period''—is a sensible approach to helping veterans obtain the skills they may need to stay competitive in a 21st Century workforce.

Section 103 of this legislation would prohibit veterans' education benefits from being considered when determining a veteran's entitlement to Federal financial aid administered by the Department of Education. Under current law, such benefits are already excluded from eligibility calculations in determining eligibility for some forms of assistance granted by Title IV of the Higher Education Act of 1965, e.g., Pell grants and subsidized Stafford loans, but not for other forms of assistance, e.g., unsubsidized Stafford loans and campus-based aid. This legislation would rectify that anomaly by excluding veterans' education benefits from all such eligibility determinations.

Section 104 of the bill would fix yet another anomaly of law applicable to Reservists who are called to active duty. Current law generally specifies that such Reservists are eligible for MGIB benefits if they have served a minimum of 2 consecutive years of active duty. Current law also requires that service members contribute $100 a month during their first 12 months of service to gain eligibility for MGIB benefits. Because the Department of Defense (DoD) activates Reservists for indefinite periods of time, it is impossible for a Reservist to know at the beginning of his or her activation period—when a decision has to be made on contributing the requisite $100 per month—whether he or she will, in fact, end up serving 2 consecutive years of active duty and, thus, whether he or she will become eligible for MGIB benefits. Due to that uncertainty, activated Reservists are, quite reasonably, hesitant to make the requisite contributions. The DoD and VA have worked around this problem; they permit Reservists who end up serving 2 consecutive years to pay the $1,200 contribution at some later point—but the law does not explicitly authorize that allowance. This legislation would update the law to authorize these ''late'' contributions.

Section 201 of this legislation would increase the maximum amount of the VA home loan guaranty from $60,000 to $83,425. A guaranty of $60,000 allows a veteran to purchase, without a down payment, a home with a value of four times that amount, or $240,000. In many areas of the country, the median cost of housing is over $300,000, effectively limiting the utility of this benefit. This legislation would raise the VA guaranty limit to make the effective amount of a VA loan equal to the so-called conforming loan rate in the non-VA secondary mortgage markets.

Sections 202 and 203 of this bill would expand on legislation I authored in 2002 that added a pilot adjustable rate mortgage, ARM, feature to VA's loan guaranty program. Currently, the pilot program, which expires on September 30, 2005, allows VA to guarantee only so-called ''hybrid'' ARMs. Even then, restrictive adjustment caps have effectively limited the program to only one type of hybrid ARM financing. This bill would give VA permanent authority to guaranty a full range of ARM financing, to include traditional 1-year ARMs and hybrid ARMs with interest rates fixed for periods of 3, 5, 7, or 10 years, consistent with the ARM provisions of the National Housing Act. I believe the housing benefit for veterans should, at the very least, equal that of benefits available for non-veterans through the FHA program.

Section 204 of this legislation resurrects legislation that was approved by the Senate during the 106th Congress, but which failed to pass the House. Current law mandates that VA collect a funding fee when veterans obtain a loan with a VA guaranty, but it also allows for a waiver of the funding fee if the veteran seeking housing assistance has suffered a service-connected disability. For the funding fee to be waived under current law, however, the veteran must already be receiving compensation, an event which can only occur after the service member has been discharged from service. Because VA has a presence at over 136 military discharge sites (where it conducts predischarge medical examinations), it is common for someone who is still in service to be adjudged disabled by VA. But because such a service member cannot yet receive veterans' compensation, VA cannot waive the funding fee even though an active-duty service can make use of his or her entitlement to a VA-guaranteed home loan while still in

service. This legislation would rectify that situation by, prospectively, allowing VA to waive funding fees for active duty service members who are eligible to receive compensation as a result of a pre-discharge examinations, but who are not yet discharged from service.

Section 301 of this legislation would rectify what I perceive to be an unintended oversight of the Veterans Employment Opportunity Act of 1998. That statute granted Federal job preferences to two classes of veterans—those who are ''preference eligible'' due to service during wartime or because of service-connected disability, and those who served on active duty for at least three years. The statute also authorized administrative and judicial redress but, by oversight, it limited such redress to the ''preference eligible'' class of veterans only. This legislation would extend current remedies to all veterans who are eligible for Federal job preferences.

Section 311 of this legislation would prohibit the collection of co-payments from veterans receiving VA-provided hospice care. The requirement for copayments for hospice care is, I think, unduly burdensome in cases where the end of life is near. The Bush administration concurs; it requested this exemption in its fiscal year 2005 budget proposal. I am glad to advance this provision on behalf of the President.

Section 321 of this bill would extend three non-controversial statutory authorities that are now scheduled to expire. The first would extend, until 2009, the requirement that the VA's Advisory Committee on Former Prisoners of War submit a biennial report of its recommendations for improvements to benefits afforded to former prisoners of war. The second would make permanent VA authority to provide counseling and treatment services to veterans who have experienced sexual trauma while in service. The third would extend, until December 31, 2009, a reporting requirement imposed on VA's Special Medical Advisory Group. Finally, Section 331 of my legislation would update the definition of minority group members for purposes of the work of VA's Advisory Committee on Minority Veterans.

Mr. President, the principal thrust of this legislation is to improve and modernize aspects of VA education and housing programs which were first conceived 60 years ago. These improvements, and others contained in this bill, merit the support of the Senate. I request that support, and ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2486

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Veterans' Benefits Improvements Act of 2004''.

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

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—EDUCATION BENEFITS

Sec. 101. Increase in maximum amount of contribution for increased amount of basic educational assistance under Montgomery GI Bill.
Sec. 102. Pilot program on additional two-year period for use of entitlement by participants in Montgomery GI Bill for vocational or job readiness training.
Sec. 103. Exclusion of veterans education benefits in determination of eligibility or amount of Federal educational grants and loans.
Sec. 104. Collection of contributions for educational assistance under Montgomery GI Bill from Reserves called to active duty.

TITLE II—HOUSING BENEFITS

Sec. 201. Increase in maximum amount of housing loan guarantee.
Sec. 202. Permanent authority for guarantee of adjustable rate mortgages.
Sec. 203. Permanent authority for guarantee of hybrid adjustable rate mortgages and modification of guarantee authority.
Sec. 204. Termination of collection of loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.

TITLE III—OTHER BENEFITS AND BENEFITS MATTERS

Subtitle A—Employment Benefits

Sec. 301. Availability of administrative and judicial redress for certain veterans denied opportunity to compete for Federal employment.

Subtitle B—Medical Benefits

Sec. 311. Prohibition on collection of copayments for hospice care.

Subtitle C—Extension of Benefits and Related Authorities

Sec. 321. Extension of various authorities relating to benefits for veterans.

Subtitle D—Other Matters

Sec. 331. Modification of definition of minority group member for purposes of Advisory Committee on Minority Veterans.

**SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

**TITLE I—EDUCATION BENEFITS**

**SEC. 101. INCREASE IN MAXIMUM AMOUNT OF CONTRIBUTION FOR INCREASED AMOUNT OF BASIC EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL.**

(a) ACTIVE DUTY BENEFIT.—Section 3011(e)(3) is amended by striking ''$600'' and inserting ''$2,000''.

(b) SELECTED RESERVE BENEFIT.—Section 3012(f)(3) is amended by striking ''$600'' and inserting ''$2,000''.

**SEC. 102. PILOT PROGRAM ON ADDITIONAL TWO-YEAR PERIOD FOR USE OF ENTITLEMENT BY PARTICIPANTS IN MONTGOMERY GI BILL FOR VOCATIONAL OR JOB READINESS TRAINING.**

(a) IN GENERAL.—(1) Subchapter I of chapter 30 is amended by adding at the end the following new section:

**''§ 3020A. Additional two-year period for use of entitlement for vocational or job readiness instruction or training: pilot program**

''(a) PILOT PROGRAM REQUIRED.—(1) The Secretary shall carry out a pilot program to assess the feasibility and advisability of permitting individuals whose entitlement to basic educational assistance under this chapter expires under section 3031 of this title before their complete use of such entitlement to be entitled to an additional two-year period for their use of such entitlement.

''(2) The pilot program shall commence six months after the date of the enactment of this section, and shall terminate four years after the date of the commencement of the pilot program.

''(b) ADDITIONAL TWO-YEAR PERIOD OF ENTITLEMENT.—Notwithstanding any provision of section 3031 of this title, an individual described in subsection (c) shall, at the expiration of the 10-year period beginning on the educational assistance entitlement commencement date of such individual, be entitled to an additional two-year period for the use of entitlement to basic educational assistance under this chapter.

''(c) ELIGIBLE INDIVIDUALS.—(1) An individual described in this subsection is any individual who—

''(A) as of the end of the 10-year period beginning on the educational assistance entitlement commencement date of such individual—

''(i) would remain entitled to basic educational assistance under this chapter but for the expiration of the 10-year delimiting period applicable to such individual under section 3031 of this title; and

''(ii) has not utilized all of the entitlement of such individual to basic educational assistance under this chapter; and

''(B) at the time of the application for entitlement under this subsection (d), is accepted, enrolled, or otherwise participating (as determined by the Secretary) in instruction or training described in subsection (e).

''(2) This subsection does not apply to an individual otherwise described by paragraph (1) whose remaining entitlement to basic educational assistance under this chapter as described in subparagraph (A)(ii) of that paragraph is based on the transfer of basic educational assistance under section 3020 of this title.

''(d) APPLICATION.—(1) An individual seeking an additional two-year period for the use of entitlement under this section shall submit to the Secretary an application therefor containing such information as the Secretary may require for purposes of this section.

''(2) The Secretary may not receive applications under this subsection after the termination date of the pilot program under subsection (a)(2).

''(e) COMMENCEMENT OF ADDITIONAL PERIOD FOR USE.—The additional two-year period for the use of entitlement by an individual under this section shall commence on the date the application of the individual under subsection (d) is received by the Secretary if the Secretary determines pursuant to a review of the application that the individual is an individual described by subsection (c) for purposes of this section.

''(f) INSTRUCTION OR TRAINING COVERED BY ADDITIONAL PERIOD FOR USE.—(1) The instruction or training for which entitlement to basic educational assistance under this chapter may be used during the additional two-year period for the use of entitlement under this section is as follows:

''(A) Education leading to employment in a high technology industry for purposes of section 3014A of this title.

''(B) A full-time program of apprenticeship or other on-job training approved as provided

in clause (1) or (2), as appropriate, of section 3687 of this title.

''(C) A cooperative program (as defined in section 3482(a)(2) of this title).

''(D) A licensing or certification test approved under section 3689 of this title.

''(E) Training or education leading toward a professional or vocational objective which has been approved in accordance with the provisions of subchapter I of chapter 36 of this title and is identified by the Secretary in regulations to be prescribed by the Secretary for purposes of this section.

''(2) Entitlement to basic educational assistance under this chapter may not be used during the additional two-year period for the use of entitlement under this section for the instruction or training as follows:

''(A) General education leading toward a standard college degree (as defined in section 3452(g) of this title), unless the program or training concerned will result in an associates degree that is approved by the Secretary in the manner specified in paragraph (1)(E) to be necessary to obtain a professional or vocational objective.

''(B) Preparatory courses for a test that is required or used for admission to an institution of higher education or graduate school.

''(g) COORDINATION WITH CERTAIN OTHER BENEFITS.—(1) An individual entitled to basic educational assistance under subsection (c) is entitled to educational and vocational counseling under section 3697A of this title in connection with the use of entitlement under this section.

''(2) An individual using entitlement to basic educational assistance under this chapter during the additional two-year period for the use of entitlement under this section is not entitled during the use of such entitlement to the following:

''(A) Supplemental educational assistance under subchapter III of this chapter.

''(B) A work-study allowance under section 3485 of this title.

''(h) EDUCATIONAL ASSISTANCE ENTITLEMENT COMMENCEMENT DATE DEFINED.—In this section, the term 'educational assistance entitlement commencement date', in the case of an individual described in subsection (b)(1), means the date on which begins the period during which the individual may use the individual's entitlement to educational assistance under chapter as determined under section 3031 of this title.

''(i) EFFECT OF TERMINATION OF PILOT PROGRAM.—The termination of the pilot program under subsection (a)(2) shall not effect the continuing use of entitlement under this section of any individual whose additional two-year period for the use of entitlement under this section continues after the date of the termination of the pilot program under that subsection.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3020 the following new item:

''3020A. Additional two-year period for use of entitlement for vocational or job readiness instruction or training: pilot program.''.

(b) CROSS-REFERENCE AMENDMENT.—Section 3031 is amended—

(1) in subsection (a), by striking ''subsections (b) through (g), and subject to subsection (h),'' and inserting ''subsections (b) through (h), and subject to subsection (i),'';

(2) by redesignating subsection (h) as subsection (i); and

(3) by inserting after subsection (g) the following new subsection (h):

''(h) An individual whose period for the use of entitlement to basic educational assistance under this chapter would otherwise expire under this section may be eligible for an additional two-year period for the use of entitlement under section 3020A of this title.''.

**SEC. 103. EXCLUSION OF VETERANS EDUCATION BENEFITS IN DETERMINATION OF ELIGIBILITY OR AMOUNT OF FEDERAL EDUCATIONAL GRANTS AND LOANS.**

(a) IN GENERAL.—(1) Subchapter II of chapter 36 is amended by inserting after section 3694 the following new section:

**''§ 3694A. Exclusion of veterans education benefits in determination of eligibility or amount of Federal education grants and loans**

''(a) EXCLUSION.—Notwithstanding any other provision of law and subject to subsection (b), education benefits shall not be considered as income, assets, or other monetary resource in determining eligibility for, or the amount of, grant or loan assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(b) EXCEPTION.—In the case of campus-based student financial assistance, the amount of such assistance for which an individual would otherwise be eligible without taking into consideration education benefits as described in subsection (a) shall be reduced to the extent that the sum of such amount, the amount of the education benefits of the individual, and the amount of the Federal Pell Grant, if any, of the individual exceeds the cost of attendance of the individual.

''(c) DEFINITIONS.—In this section:

''(1) The term 'campus-based student financial assistance' means grant, work, or loan assistance provided under subpart 3 of part A, and parts C and E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070b et seq; 42 U.S.C. 2751 et seq.; 20 U.S.C. 1087aa et seq.).

''(2) The term 'cost of attendance' has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

''(3) The term 'education benefits' means education benefits under chapters 30, 32, and 35 of this title and under chapter 1606 of title 10.

''(4) The term 'Federal Pell Grant' means a grant provided under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a).''.

(2) The table of sections at the beginning of chapter 36 is amended by inserting after the item referring to section 3694 the following new item:

''3694A. Exclusion of veterans education benefits in determination of eligibility or amount of Federal education grants and loans.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to award years, as that term is defined in section 481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)), beginning on or after July 1, 2004.

**SEC. 104. COLLECTION OF CONTRIBUTIONS FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM RESERVES CALLED TO ACTIVE DUTY.**

(a) ACTIVE DUTY PROGRAM.—Section 3011(b) is amended—

(1) by striking ''The basic pay'' and inserting ''(1) Except as provided in paragraph (2), the basic pay'';

(2) by designating the second sentence as paragraph (3), indenting the left margin of such paragraph, as so designated, two ems, and, in that paragraph by striking ''this chapter'' and inserting ''this subsection''; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

''(2) In the case of an individual covered by paragraph (1) who is a Reserve, the Secretary shall collect from the individual an amount equal to $1,200 before the commencement by the individual of the use of entitlement to basic educational assistance under this chapter. The Secretary may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary determines appropriate.''.

(b) SELECTED RESERVE PROGRAM.—Section 3012(c) is amended—

(1) by striking ''The basic pay'' and inserting ''(1) Except as provided in paragraph (2), the basic pay'';

(2) by designating the second sentence as paragraph (3), indenting the left margin of such paragraph, as so designated, two ems, and, in that paragraph by striking ''this chapter'' and inserting ''this subsection''; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

''(2) In the case of an individual covered by paragraph (1) who is a Reserve, the Secretary shall collect from the individual an amount equal to $1,200 before the commencement by the individual of the use of entitlement to basic educational assistance under this chapter. The Secretary may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary determines appropriate.''.

## TITLE II—HOUSING BENEFITS

**SEC. 201. INCREASE IN MAXIMUM AMOUNT OF HOUSING LOAN GUARANTEE.**

(a) IN GENERAL.—Subparagraph (A)(i)(IV) of section 3703(a)(1) is amended by striking ''$60,000'' and inserting ''$83,425''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of such section is amended by striking ''$60,000'' and inserting ''$83,425''.

**SEC. 202. PERMANENT AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES.**

Section 3707(a) is amended by striking ''The Secretary shall'' and all that follows through ''guaranteeing loans'' and inserting ''The Secretary shall guarantee loans''.

**SEC. 203. PERMANENT AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES AND MODIFICATION OF GUARANTEE AUTHORITY.**

(a) PERMANENT AUTHORITY.—Subsection (a) of section 3707A is amended by striking ''The Secretary shall'' and all that follows through ''guaranteeing loans'' and inserting ''The Secretary shall guarantee loans''.

(b) MODIFICATION OF INTEREST RATE ADJUSTMENT REQUIREMENTS.—Subsection (c) of such section is amended—

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

''(3) in the case of the initial interest rate adjustment under such provisions, be limited to a maximum increase or decrease of 1 percentage point if the interest rate remained fixed for 3 or fewer years; and''; and

(2) in paragraph (4), by striking ''5 percentage points'' and all that follows and inserting ''such number of percentage points as the Secretary shall prescribe for purposes of this section.''.

(c) NO EFFECT ON GUARANTEE OF LOANS UNDER HYBRID ADJUSTABLE RATE MORTGAGE GUARANTEE DEMONSTRATION PROJECT.—The amendments made by this section shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

**SEC. 204. TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS.**

Section 3729(c) is amended—

(1) by inserting ''(1)'' before ''A fee''; and

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

''(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.''.

**TITLE III—OTHER BENEFITS AND BENEFITS MATTERS**

**Subtitle A—Employment Benefits**

**SEC. 301. AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT.**

(a) ADMINISTRATIVE REDRESS.—Section 3330a(a)(1) of title 5, United States Code, is amended—

(1) by inserting ''(A)'' after ''(1)''; and

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

''(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.''.

(b) JUDICIAL REDRESS.—Section 3330b(a)(1) of such title is amended by inserting '', or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section,'' after ''a preference eligible''.

**Subtitle B—Medical Benefits**

**SEC. 311. PROHIBITION ON COLLECTION OF COPAYMENTS FOR HOSPICE CARE.**

Section 1710B(c)(2) is amended—

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

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) to a veteran being furnished hospice care under this section; or''.

**Subtitle C—Extension of Benefits and Related Authorities**

**SEC. 321. EXTENSION OF VARIOUS AUTHORITIES RELATING TO BENEFITS FOR VETERANS.**

(a) SIX-YEAR EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR.—Section 541(c)(1) is amended by striking ''2003'' and inserting ''2009''.

(b) PERMANENT AUTHORITY FOR COUNSELING AND TREATMENT FOR SEXUAL TRAUMA.—Section 1720D(a) is amended—

(1) in paragraph (1), by striking ''During the period through December 31, 2004, the Secretary'' and inserting ''The Secretary''; and

(2) in paragraph (2), by striking '', during the period through December 31, 2004,''.

(c) FIVE-YEAR EXTENSION OF REPORTS BY SPECIAL MEDICAL ADVISORY GROUP.—Section 7312(d) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

**Subtitle D—Other Matters**

**SEC. 331. MODIFICATION OF DEFINITION OF MINORITY GROUP MEMBER FOR PURPOSES OF ADVISORY COMMITTEE ON MINORITY VETERANS.**

Subsection (d) of section 544 is amended to read as follows:

''(d) In this section, the term 'minority group member' means an individual who is—

''(1) American Indian or Alaska Native;

''(2) Asian;

''(3) Black or African American;

''(4) Native Hawaiian or other Pacific Islander; or

''(5) of Hispanic, Latino, or Spanish origin.''.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 368—COMMENDING THE UNIVERSITY OF VIRGINIA CAVALIERS WOMEN'S LACROSSE TEAM FOR WINNING THE 2004 NCAA DIVISION I WOMEN'S LACROSSE NATIONAL CHAMPIONSHIP

Mr. ALLEN (for himself and Mr. WARNER) submitted the following resolution; which was considered and agreed to:

S. RES. 368

Whereas the students, alumni, faculty, and supporters of the University of Virginia are to be congratulated for their commitment and pride in the University of Virginia Cavaliers National Champion women's lacrosse team;

Whereas in the National Collegiate Athletic Association (NCAA) championship game against the Princeton Tigers, the Cavaliers raced out to a 5 to 1 halftime lead on the strength of 8 saves by tournament Most Valuable Player Andrea Pfeiffer and 2 goals and an assist from Tyler Leachman;

Whereas the Cavaliers won the 2004 NCAA Division I women's lacrosse National Championship with an outstanding second half performance, scoring 5 goals to the Princeton Tigers' 3 goals to win by a score of 10 to 4;

Whereas the Cavaliers added the NCAA women's lacrosse title to their Atlantic Coast Conference (ACC) title to claim their second championship in 2004;

Whereas every player on the Cavalier women's lacrosse team—Amy Appelt, Caitlin Banks, Bridget Bradley, Kate Breslin, Laura Burns, Cary Chasney, Kim Connors, Ashley Dodson, Ashleigh Haas, Julie Hauser, Megan Havrilla, Carol Hotarek, Lauren Keller, Meredith Lazarus, Tyler Leachman, Nikki Leib, Chelsea Metz, Ginger Miles, Jessy Morgan, Erin Nagle, Andrea Pfeiffer, Elizabeth Pinney, Kaitlin Swagart, Erin Sweeney, Morgan Thalenberg, Molly Urlock, Jess Wasilewski, and Courtney Young—contributed to the team's success in this impressive championship season;

Whereas the Cavaliers women's lacrosse team Head Coach Julie Myers has won more than 100 games and has taken her teams to the NCAA title game 4 times, a feat only accomplished by 4 other coaches in women's lacrosse Division I history;

Whereas Coach Myers's 8 consecutive invitations to the NCAA lacrosse tournament has only been accomplished by 4 other coaches in women's lacrosse Division I history;

Whereas Coach Myers entered this season, her ninth year at the University of Virginia, as Head Coach with 2 NCAA women's lacrosse titles—1 as a player (1991) and 1 as an assistant coach (1993);

Whereas Julie Myers is the third person in NCAA women's lacrosse history to win a title as both a player and a coach, and is the first person to play for the championship both as a player and as a head coach; and

Whereas assistant coaches Heather Dow, Kateri Linville, and Colleen Shearer deserve high commendation for their strong leadership of, and superb coaching support to, the University of Virginia Cavaliers women's lacrosse team: Now, therefore, be it

*Resolved,* That the Senate—

(1) congratulates the University of Virginia Cavaliers women's lacrosse team for winning the 2004 NCAA Division I women's lacrosse National Championship;

(2) recognizes the achievements of all the team's players, coaches, and support staff, and invites them to the United States Capitol Building to be honored; and

(3) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the Head Coach of the National Champion University of Virginia Cavaliers women's lacrosse team.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 3251. Mr. TALENT 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 3252. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3253. Mr. ALLARD (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3254. Mr. ALLARD (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3255. Mr. SARBANES (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3256. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 1955, to make technical corrections to laws relating to Native Americans, and for other purposes; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 3251.** Mr. TALENT 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 G of title X, add the following:

**SEC. 1068. SENSE OF CONGRESS ON AMERICA'S NATIONAL WORLD WAR I MUSEUM.**

(a) FINDINGS.—Congress makes the following findings:

(1) The Liberty Memorial Museum in Kansas City, Missouri, was built in 1926 in honor of those individuals who served in World War I in defense of liberty and the Nation.

(2) The Liberty Memorial Association, a nonprofit organization which originally built the Liberty Memorial Museum, is responsible for the finances, operations, and collections management of the Liberty Memorial Museum.