(1) make the review required under subsection (a) available to school food authorities via the Internet, including recommendations to improve participation in the school breakfast program; and

(2) transmit to Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the review.

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

**TITLE III—COMMODITY DISTRIBUTION PROGRAMS**

**SEC. 301. COMMODITY DISTRIBUTION PROGRAMS.**

Section 15 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100–237) is amended by striking subsection (e).

**TITLE IV—MISCELLANEOUS**

**SEC. 401. SENSE OF CONGRESS REGARDING EFFORTS TO PREVENT AND REDUCE CHILDHOOD OBESITY.**

(a) FINDINGS.—Congress finds that—

(1) childhood obesity in the United States has reached critical proportions;

(2) childhood obesity is associated with numerous health risks and the incidence of chronic disease later in life;

(3) the prevention of obesity among children yields significant benefits in terms of preventing disease and the health care costs associated with such diseases;

(4) further scientific and medical data on the prevalence of childhood obesity is necessary in order to inform efforts to fight childhood obesity; and

(5) the State of Arkansas—

(A) is the first State in the United States to have a comprehensive statewide initiative to combat and prevent childhood obesity by—

(i) annually measuring the body mass index of public school children in the State from kindergarten through 12th grade; and

(ii) providing that information to the parents of each child with associated information about the health implications of the body mass index of the child;

(B) maintains, analyzes, and reports on annual and longitudinal body mass index data for the public school children in the State; and

(C) develops and implements appropriate interventions at the community and school level to address obesity, the risk of obesity, and the condition of being overweight, including efforts to encourage healthy eating habits and increased physical activity.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the State of Arkansas, in partnership with the University of Arkansas for Medical Sciences and the Arkansas Center for Health Improvement, should be commended for its leadership in combating childhood obesity; and

(2) the efforts of the State of Arkansas to implement a statewide initiative to combat and prevent childhood obesity are exemplary and could serve as a model for States across the United States.

**TITLE V—IMPLEMENTATION**

**SEC. 501. GUIDANCE AND REGULATIONS.**

(a) GUIDANCE.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1).

(b) INTERIM FINAL REGULATIONS.—The Secretary may promulgate interim final regulations to implement the amendments described in subsection (a).

(c) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).

**SEC. 502. EFFECTIVE DATES.**

(a) IN GENERAL.—Except as otherwise provided in this Act, this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) SPECIAL EFFECTIVE DATES.—

(1) JULY 1, 2004.—The amendments made by sections 106, 107, 126(c), and 201 take effect on July 1, 2004.

(2) OCTOBER 1, 2004.—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) take effect on October 1, 2004.

(3) JANUARY 1, 2005.—The amendments made by sections 116(f)(1) and 116(f)(3) take effect on January 1, 2005.

(4) JULY 1, 2005.—The amendments made by sections 102, 104, 105, 111, and 126(b) take effect on July 1, 2005.

(5) OCTOBER 1, 2005.—The amendments made by sections 116(d) and 203(e)(9) take effect on October 1, 2005.

Mr. CRAPO. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

Mr. WARNER. In consultation with the majority leader, the distinguished Democratic leader, and the Democratic whip, Senator LEVIN and I have worked out a series of steps we are going to begin to take in seriatim at this time. The first step is that I yield the floor such that the Chair can recognize the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 3400

Mr. FEINGOLD. I ask for regular order with regard to amendment No. 3400.

The PRESIDING OFFICER. The amendment is now pending.

Mr. FEINGOLD. Mr. President, I understand there will be a second-degree amendment offered to my amendment which is to bring a small measure of relief to military families by allowing the FMLA-eligible family members of deployed personnel to be able to use the FMLA benefits for issues directly related to or resulting from their loved one's deployment. This has been accepted by the body previously and put into other legislation. It was certainly my hope that we would be able to move forward with this. It is something our military families desperately need. However, it is my understanding that this second-degree amendment would require protracted debate. It is in our interest to move this important Department of Defense authorization bill forward.

Mr. WARNER. If the Senator would withhold.

Mr. FEINGOLD. I yield to the Senator.

AMENDMENT NO. 3475 TO AMENDMENT NO. 3400

(Purpose: To enable military family members to take time off to attend to deployment-related business, tasks, and other family issues.)

Mr. WARNER. There is at the desk a second-degree amendment which I submit on behalf of Senator GREGG and myself.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. GREGG, for himself and Mr. WARNER, proposes an amendment 3475 to amendment 3400.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. GREGG. Mr. President, Senator FEINGOLD has offered an amendment intended to help military families who have a family member activated in support of a contingency operation. First of all, I make it clear that all of us want to assist families placed in the difficult position of operating with one family member called to duty.

That is why the underlying bill contains provisions such as permanently increasing the Family Separation Allowance, FSA, payable to deployed servicemen and women with dependents up to $250 a month.

But the proposal made by Senator FEINGOLD to expand the Family Medical Leave Act is not the right approach. I rise to offer an alternative proposal as a second-degree amendment. The amendment I am offering today presents military families a much better method for obtaining the flexibility they may need to prepare for activation and to keep the family running while a family member is called to duty.

The Feingold amendment would offer some employees unpaid leave. My amendment will offer paid leave. While the Feingold amendment applies only to those military family members that work for employers with 50 or more employees, and offers no assistance at all to individuals who work for smaller employers, my amendment will apply to all military family employees subject to the Fair Labor Standards Act.

The Feingold amendment will also create uncertainty and animosity in the workplace by giving employees the vaguely defined right to take intermittent leave with minimal notice for any ''issue relating to ''the family member's service''—a phrase which can be interpreted to cover just about any activity.

My amendment, on the other hand offers a clear method for earning and using paid leave time.

The Feingold amendment is a mandate in search of a problem—no need has been demonstrated for it and in

fact, in a recent survey of activated Armed Service members' spouses, 80 percent stated that their employers were supportive of their need to complete pre-activation tasks.

In light of this existing support by employers, my amendment creates a voluntary system of adding flextime to the work schedule. Therefore, employers who already have programs in place to accommodate military families will have the option of maintaining those programs or adopting a flextime initiative, they will not be forced to add another complicated layer onto the already confusing Family and Medical Leave law.

I also point out that the Feingold amendment has never been the subject of a single House or Senate hearing. I am sure that many of my colleagues, like me, have heard from businesses concerned about the difficulties they will face in interpreting and implementing the Feingold amendment.

Flextime proposals, however, have been vetted in no fewer than 8 hearings in the Senate and the U.S. House of Representatives. There is also concerns that the Feingold amendment may threaten the operation of military bases. According to the Department of Defense. ''If a major military unit were deployed from a single base, this policy could effectively shut down the installation depending upon the number of family member employees covered.''

My amendment would not present such a threat to military installations because it does not apply to public employees.

Finally, Mr. President, I recognize that all of us want to do what we can to ease the burden on families who have a family member—be it a spouse, parent or child—serving to protect our nation. The sacrifice they are willing to make is nothing short of remarkable. I believe the approach I am offering here today is the best way to help these families. I urge my colleagues to support my amendment.

Mr. KENNEDY. Mr. President, the Feingold amendment builds on a time tested law, the Family Medical Leave Act, to allow family members flexibility to prepare to send their loved ones to Iraq, Afghanistan, and elsewhere abroad to fight on behalf of their Nation. The Family Medical Leave Act has helped more than 35 million Americans over the last 10 years. It will help even more under the Feingold amendment. The amendment will allow family members to take the time off they need to meet child care needs, care for elderly parents, and otherwise balance their family responsibilities as their loved ones prepare for active duty.

The reason this laudable Feingold amendment is being withdrawn is because our colleagues on the other side of the aisle want to give our military families a pay cut.

Corporate profits are growing, while worker wages are not. Yet Republicans keep trying to implement more policies that are bad for workers. First, Republicans took away overtime protections from millions of Americans. Now, they want to give employers additional power to decide how workers are to be compensated for their overtime work.

The Fair Labor Standards Act, FLSA, currently requires employers to pay workers time-and-a-half for hours worked in excess of 40 per week. When workers put in overtime hours now, they have a right to time and half pay, and they have total control over how or when to use that pay.

The Gregg amendment would allow employers to pay workers nothing for overtime work at the time the work is performed, in exchange for a promise of a new schedule. Under current law, employers are free to offer more flexible schedules. The only difference is that they have to pay workers for their overtime hours.

For those who work overtime, overtime pay constitutes 25 percent of their pay. Middle class families, already squeezed in today's economy, rely on these added earnings for their children's college tuition, their own retirement, or even to meet their monthly bills. In fact, millions of workers depend on cash overtime to make ends meet and pay their housing, food and healthcare bills.

The Gregg proposal has insufficient enforcement provisions to ensure that employees will not be forced to change their schedules instead of getting overtime pay. This will mean a pay cut for millions of Americans. Workers deserve a pay raise, not a pay cut.

Mr. LEAHY. Mr. President, I rise today to express my strong support for the amendment offered by Senator FEINGOLD.

Senator FEINGOLD's amendment, which I am proud to cosponsor, would allow the work of the Inspector General of the Coalition Provisional Authority, CPA–IG, to continue its work uninterrupted after the June 30 handover.

This is critical. Congress provided more than $18 billion to rebuild Iraq, roughly the same amount that we spend on the rest of the world combined. Congress jammed through the Iraq supplemental appropriations bill in an extremely short time, without a sufficient number of hearings, into a very chaotic environment without the usual financial controls.

Recognizing this reality, Congress created a strong, independent inspector general to help police these funds.

In the months that followed passage of the Iraq supplemental, we heard numerous reports of waste, fraud, and abuse. If anything, this should have sent a clear signal to the administration and Congress that we need more—not less—oversight of these funds.

It defies logic then that the State Department is now proposing to weaken the one entity that Congress specifically tasked with keeping track of these tax dollars.

The State Department's plan could undermine the independence of this inspector general and disrupt this important work, reducing Congress's ability to account for these funds. It is unlocking the vault to those who want to cheat us.

The State Department also has told the Appropriations Committee that it will have to create 25 new positions to handle the work in Iraq.

Let me get this straight. We want to close down an IG that has about 60 people in place, which are actively conducting audits and rooting out waste, fraud, and abuse.

After the administration is finished closing down that office, they will turn around and hire 25 new people to do the same work—only through at a lower level office at the State Department.

Why on Earth would we want to do this? At a time when we are hearing weekly reports of abuse by Halliburton and others, why would we want to reinvent the wheel? Why would we downgrade the status of the CPA–IG and undermine its independence? It just does not make any sense.

This is why the amendment offered by the Senator from Wisconsin is so important.

This is why I support his amendment.

Last year Senator FEINGOLD and I offered an amendment to the supplemental bill for Iraq and Afghanistan that established an inspector general for the Coalition Provisional Authority so that there would be one auditing body completely focused on ensuring taxpayer dollars are spent wisely and efficiently, and that this effort is free of waste, fraud, and abuse.

Today the CPA, as we all know, is phasing out, but the reconstruction effort has only just begun. According to the Congressional Research Service, as of May 18, only $4.2 billion of the $18.4 billion Congress appropriated for reconstruction in November had even been obligated. This amendment would ensure that the inspector general's office can continue its important work even after June 30 rather than being compelled to start wrapping up and shutting down while so much important work remains to be done.

It renames the Office of the CPA IG, changing it to Special Inspector General for Iraq Reconstruction. The amendment establishes that this inspector general shall continue operating until the lion's share of the money Congress has appropriated to date for the Iraq relief and reconstruction fund has been obligated.

American taxpayers have been asked to shoulder a tremendous burden when it comes to the reconstruction of Iraq. Over 20 billion taxpayer dollars have been appropriated for the Iraq relief and reconstruction fund. That is more than the entire fiscal year 2004 Foreign Operations annual appropriation. It is more than the entire fiscal year 2004 Foreign Operations annual appropriation. This is a tremendous sum to devote to one country.

We all agreed last year that it required an entity on the ground, exclusively focused on this effort, to ensure

adequate funding and oversight. We agreed that we need a qualified, independent watchdog with all the powers and the authorities that accrue to inspectors general under the Inspector General Act of 1978. We agreed that business as usual whereby individual agency IG's attempt to oversee this mammoth effort in addition to everything else the agency does it simply not appropriate in this case.

There is nothing ordinary about the nature of the U.S. taxpayer investment in Iraq. Ordinary measures will not suffice.

This amendment modifies the legislation creating this IG to ensure that it does not disappear along with the CPA, but instead continues to operate until the amount of reconstruction spending in Iraq more closely resembles other large bilateral foreign assistance programs, which are overseen by existing agency inspectors general. Specifically, to phases out the special IG after 80 percent of the Iraq Relief and Reconstruction Fund appropriated to date is obligated. If that fund grows substantially in the next calendar, then Congress can consider the wisdom of adjusting this mandate accordingly.

Let there be no confusion, this inspector general is only tasked with overseeing how U.S. taxpayer dollars are spent. It does not have a mandate to oversee Iraqi resources. That is not what this is about. So there is nothing at all in continuing this operation that is inconsistent with the transfer of sovereignty on June 30.

Because the Department of Defense has responsibility for what is happening to some reconstruction dollars and the Department of State will have responsibility going forward, it makes good sense to have a focused IG on the ground who is able to see the entire picture at once—not being completely required to just focus on the State Department position or just focus on the Department of Defense portion. This amendment is in no way hostile to the reconstruction effort. This amendment is about trying to get it right.

Suggesting that a special inspector general's office continues to be in order in Iraq is hardly revolutionary. As I have mentioned, the reconstruction budget for Iraq is bigger than the entire fiscal year 2004 Foreign Operations Appropriations bill. Yet five different inspectors general—at USAID, at the State Department, at the Defense Department, at the Treasury, and at the Export-Import Bank—are charged with overseeing portions of that account. In fact, currently some 41 Federal establishments and designated Federal entities with annual budgets less than $21 billion have their own, independent, statutorily mandated inspector general, from the Railroad Retirement Board to the Smithsonian Institution. We ask for focused accountability when taxpayer dollars are a stake in these situations. We must demand the same in Iraq.

Obviously, when you are talking about $20 billion just for this Iraq situation, we have to do the same thing. We must demand the same in Iraq.

To date, the Inspector General for the Coalition Provisional Authority has made important progress, and has some 30 active investigations and 19 audits underway. A whistleblower hotline established by the inspector general has received hundreds of calls. This is clearly not the time to pull the plug on his important effort.

I urge my colleagues to support this amendment. This is the critical point: To oppose this amendment is to vote for less oversight of the reconstruction effort in Iraq than we have today. It is a step backward if we don't. We cannot abdicate our oversight responsibility. The stakes are far too high for that.

AMENDMENT NO. 3400 WITHDRAWN

Mr. FEINGOLD. In light of the offering of the second-degree amendment, I am about to ask unanimous consent to withdraw my amendment, but I first indicate how important it is we provide this FMLA benefit to these families. Obviously, this issue will return, but in the spirit of trying to resolve this issue and move the bill forward, I now ask unanimous consent to withdraw my amendment No. 3400.

Mr. WARNER. No objection.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3475 WITHDRAWN

Mr. WARNER. And the second-degree amendment likewise is withdrawn.

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

The Senator from Nevada.

Mr. REID. Before the Senator from Wisconsin leaves the Senate, I want the record to indicate he has worked hard on issues relating to veterans. This is no exception.

I know the Senator, when he travels home to Wisconsin, will meet with American Legion, Veterans of Foreign Wars, and other such assembled groups. By looking at this record, they should understand what the Senator from Wisconsin has tried to do for the veterans of this country. I applaud and commend the Senator from Wisconsin for his tenacity. And he will be back, knowing the Senator from Wisconsin, to fight another day.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 3288

Mr. FEINGOLD. Mr. President, I now ask for the regular order with regard to amendment No. 3288.

The PRESIDING OFFICER. The amendment is pending.

Mr. FEINGOLD. Mr. President, for this amendment, which I offered earlier and had the yeas and nays ordered on, I now ask unanimous consent that the yeas and nays be vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. No objection.

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

Mr. FEINGOLD. Mr. President, I thank the chairman of the committee for his cooperation and for his support on this important amendment, which I understand will be accepted. This amendment allows the important work of the Inspector General of the CPA in Iraq to continue after the June 30 transition.

We are talking here about $20 billion of American taxpayers' dollars. Only about $4.5 billion has already been contracted for. So the remainder is still going to be expended. There are a great deal of audits and other efforts being made on the ground. That should continue. This has to do with protecting the American taxpayers.

I am delighted both the chairman and ranking member have expressed support for this amendment. I am confident, with their assurances, that this amendment will make it all the way through the process and become the law of the land so this fine work of this inspector general can continue.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, the matter has been discussed between myself, Senator LEVIN, Senator HARRY REID, and the distinguished Senator from Wisconsin. The concept of the inspector general is a proven concept. It is a valuable concept in the administration of our expenditures to have accountability.

We shall work on it to see that from that conference evolves, hopefully, an amendment that is a part of the statute to be incorporated eventually from the conference report that reflects the goals the Senator has set out. That is correct.

Mr. FEINGOLD. Mr. President, as to the amendment as we have crafted it, which was carefully and specifically crafted, I take the chairman's comment to indicate the approach we have taken in the Senate is the approach he will be advocating in conference.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank and congratulate the Senator from Wisconsin for this amendment. He has been an absolute bulldog when it comes to protecting taxpayers' dollars, just as he has been a fighter for veterans, as in his previous discussion.

I want to tell him I know we will be fighting with all of our energy in conference to retain this provision. It is vitally important there be this kind of an inspector general review and an inspector general who has the kind of independent power the Senator from Wisconsin has always fought for. We intend to do exactly that, to carry out, to wage his battle in conference to retain this provision.

Mr. WARNER. Mr. President, I join in thanking the Senator for his cooperation.

I draw the attention of the ranking member to suggest at this point in time we clear a package of managers' amendments.

Mr. LEVIN. We need to pass this amendment first.

Mr. WARNER. Yes, please.

The PRESIDING OFFICER. The Feingold amendment is still the pending question.

Mr. FEINGOLD. Mr. President, I urge that the amendment be adopted.

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

The amendment (No. 3288) was agreed to.

Mr. WARNER. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I rise today to speak about a very simple amendment that everyone should support. This amendment requires the Inspector General of the Department of Defense (DOD–IG), in consultation with the Inspectors General of the State Department and the CIA, to conduct a comprehensive investigation into the programs and activities of the Iraqi National Congress.

Over the last 10 years, we have seen funds from the U.S. Government spent in highly questionable, if not fraudulent ways, including money spent on oil paintings and health club memberships.

But this is only the tip of the iceberg. A number of serious questions remain unanswered concerning the INC. Here are a couple of examples:

First, the INC spent millions in setting up offices around the world, including London, Prague, Damacus, and Tehran. The State Department's internal documents indicated that they really had no idea of what was happening in some of these offices—especially Tehran. In light of the recent press reports about INC intelligence sharing with Iran, I think the DOD–IG should take a look at this issue and see what was happening in the Tehran office. We need to get to the bottom of this.

Second, the INC spent millions to set up radio and television broadcasting inside Iraq. The radio program seemed redundant as the U.S. Government was, at the time, funding Radio Free Iraq. A New York Times article questioned the effectiveness of the TV broadcasting program. Kurdish officials indicated that, despite repeated attempts, they could never pickup the INC's TV broadcast inside Iraq. This, again, raises questions about how this money is being spent. The IG should examine this issue. We need to get to the bottom of this.

Third the INC's Informaiton Collection Program—funded initially by the State Department and later by the Defense Department—continues to be a source of controversy and mystery. I have a memo here, written by the INC to Appropriations Committee staff, detailing the INC's Information Collection Program. In this memo, the INC claims to have written numerous reports to senior Administration officials, who are listed in this memo, on topics including WMD proliferation. The Administration disputes this claim. Again, we need to get to the botton of this.

I could go on and on. However, in the interests of time, I will simply say that there are many, serious unanswered questions about the INC's activities.

What was the INC doing with U.S. taxpayer dollars? What was going on in the Tehran office? Did the Information Collection Program contribute to intelligence failures in Iraq? Were the broadcasting programs at all effective in gathering support for U.S. efforts in Iraq?

To be sure, there have been a few investigations into INC. However, these have been incomplete, offering only a glimpse of what occurred.

A few years ago, the State Department Inspector General issued two reports on the INC. But these reports only covered $4.3 million and examined only the Washington and London Offices. The State Department IG informed my office yesterday that these are the only two audits they conducted and have no plans to conduct audits on this issue.

A GAO report, published earlier this year, summarized the different grant agreements that the State Department entered into with the INC, but this report did not attempt to answer the myriad questions that remain about the INC.

Another GAO report is underway, but this looks only at the narrow question of whether the INC violated U.S. laws concerning the use of taxpayer funds to pay for public propaganda.

Finally, according to press reports, the Intelligence Committee is looking to a few issues related to the INC.

My amendment is consistent with these investigations. The DOD–IG does not have to reinvent the wheel. It can build off this existing body of work to answer questions that will remain long after these investigation have been completed.

Mr. President, my amendment is about transparency. My amendment is about accountability. My amendment is about getting to the bottom of one of the most mismanaged programs in recent history.

Most importantly, my amendment is about learning from our mistakes so we do not repeat them in the future. I urge my colleague to support my amendment.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 3315, AS MODIFIED

Mr. REID. Mr. President, there is an amendment pending by Senator LANDRIEU; is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. The number of that amendment?

The PRESIDING OFFICER. Amendment No. 3315.

Mr. REID. Mr. President, I ask unanimous consent that there be a modification to the amendment offered by Senators LANDRIEU, SNOWE, ENSIGN, and MIKULSKI.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. WARNER. Mr. President, there is no objection. The matter has been carefully worked through the course of the evening, and it is ready for action by the Chair.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment (No. 3315), as modified, is as follows:

On page 130, after line 9, insert the following:

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

(a) PHASED INCREASE IN BASIC ANNUITY.—

(1) INCREASE TO 55 PERCENT.—Subsection (a)(1)(B)(i) of section 1451 of title 10, United States Code, is amended by striking ''35 percent of the base amount.'' and inserting ''the product of the base amount and the percent applicable for the month. The percent applicable for a month is 35 percent for months beginning before October 2005, 40 percent for months beginning after September 2005 and before October 2008, 45 percent for months beginning after September 2008, and 55 percent for months beginning after September 2014.''.

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

(3) SPECIAL-ELIGIBILITY ANNUITY.—Subsection (c)(1)(B)(i) of such section is amended—

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

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

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

(b) PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.—

(1) DECREASING PERCENTAGES.—Section 1457(b) of title 10, United States Code, is amended—

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

(B) by inserting after the first sentence the following: ''The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months beginning before October 2005, 15 percent for months beginning after September 2005 and before October 2008, and 10 percent for months beginning after September 2008.''.

(2) REPEAL OF PROGRAM IN 2014.—Effective on October 1, 2014, chapter 73 of such title is amended—

(A) by striking subchapter III; and

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

(c) RECOMPUTATION OF ANNUITIES.—

(1) REQUIREMENT FOR RECOMPUTATION.—Effective on the first day of each month referred to in paragraph (2)—

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

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

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

(A) October 2005.

(B) October 2008.

(C) October 2014.

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

**SEC. 643. OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.**

(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, during the open enrollment period specified in subsection (f).

(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(A) is entitled to retired pay; or

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

(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

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

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

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

(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

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

(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

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

(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section shall be the one-year period beginning on October 1, 2005.

(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

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

(i) ADDITIONAL PREMIUM.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

(i) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

(ii) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

(iii) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(B) Premiums paid under the regulations shall be credited to the Department of Defense Military Retirement Fund.

(C) In this paragraph, the term ''Department of Defense Military Retirement Fund'' means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.

AMENDMENT NO. 3467

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment, No. 3467, offered by the Senator from Nevada.

Mr. WARNER. Mr. President, I urge adoption of the second-degree amendment.

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

The amendment (No. 3467) was agreed to.

AMENDMENT NO. 3315, AS MODIFIED

The PRESIDING OFFICER. The question now is on agreeing to the first-degree amendment.

Mr. WARNER. No objection.

The PRESIDING OFFICER. Without objection, the first-degree amendment, as modified, is agreed to.

The amendment (No. 3315) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we have worked with the Senator from Louisiana for many hours today on this amendment. There was an article written, and I joke with the Senator from Louisiana. She was the feature of a veterans publication. They had a picture of her with her sleeves rolled up, muscles showing: ''Military Mary.''

MARY LANDRIEU is someone who looks out for the military. And I call her, joke with her, and ask her: How is ''Military Mary'' doing? She is very proud of this name she has picked up. Tonight is an indication of why she deserves that name. She has been outstanding in her advocacy for American

veterans. This agreement we have here tonight indicates she is not only a good advocate for the military but a very fine Senator.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, just one word, now that we have adopted the Landrieu amendment. Chairman WARNER and I used to have the privilege of having Senator LANDRIEU on the Armed Services Committee. We saw firsthand what a tigress she is and was relative to military matters. She is no longer on our committee, and we do miss her, indeed. But she brings and displays that fervor here on the floor frequently. We thank her for her tenacity. Talk about tenacity, she has a full supply of it. We commend and congratulate her.

Mr. WARNER. Mr. President, reference was made to the hard work Senator LANDRIEU performed on this amendment. Indeed, I was witness to that. But it did bring back a fond memory to me. In the period during the war in Vietnam, there was a very colorful and strong chairman in the House Armed Services Committee named Eddie Hebert from New Orleans, LA, and a gentleman who worked very closely with him, named Moon Landrieu. They were quite a team. They did a great deal working together for the men and women of the U.S. military.

When reference was made to Senator LANDRIEU's accomplishments, I am sure she would agree with me that the teachings of her distinguished father and the former chairman of the House Armed Services Committee have vested in her a lot of wisdom about military matters.

I also recognize the work done by Senators ENSIGN and SNOWE. I have been working with both of them over a period of time. Senator ENSIGN and Senator SNOWE each have put in previous pieces of legislation which basically covered this same subject. In the course of the past 48 hours, those two Senators have been working in collaboration with Senator LANDRIEU in an effort to get the Senate to take the action that we just took on that amendment. So I thank the Senator from Maine and the Senator from Nevada for their work.

As veterans look to the action taken by the Senate, they can decide for themselves on the work done by these Senators, and all Senators, because there was a unanimous vote on this amendment. I think we fulfilled our obligation to that very important class of individuals, the veterans; and particularly in this case, this provides benefits for the widows primarily—there are a few remaining spouses—but basically the widows who are at a critical time in their life and there is need for special consideration as it relates to personal finances. So I thank the Presiding Officer and I yield the floor.

Ms. SNOWE. Mr. President, I rise today in support of the Landrieu-Snowe amendment because it corrects an injustice being visited upon the survivors of our servicemembers killed in action and military retirees under the current military Survivor Benefit Plan, or SBP.

As the program currently operates, the widows or widowers of those who have ''borne the battle'' receive an annuity equal to 55 percent of the servicemember's retirement pay. That is, until they turn 62. At that time, under current law, a surviving spouse's SBP benefits must be reduced either by a Social Security offset, or a reduction in payments to 35 percent of retired pay—a drop of almost 40 percent—simply because they have reached the age of 62.

For example, let's take the widow of a Navy chief petty officer or E–7 who had served 20 years before retiring. Before she reaches 62, this widow will receive $786 per month, but on her 62nd birthday, that benefit drops to only $500 per month—a loss of $2,432 per year.

For a retired O–5, say a Marine Corps lieutenant colonel, the widow's benefit would drop by $6,960 a year as soon as she turns 62. That is quite a birthday gift.

But the inequities don't stop there. For example, the military Survivor Benefit Plan does not measure up to the federal Survivor Benefit Plan in terms of benefits paid to survivors. Survivors of federal civilian retirees under the original Civil Service Retirement System receive 55 percent of their spouse's retired pay for life—with no drop in benefits at age 62. Under the newer Federal Employee Retirement System, survivors still receive 50 percent of retired pay for life, again with no drop at age 62.

Mr. President, yet another reason that we should adopt this legislation is that members of the military pay more than their share of Survivor Benefit Plan program costs, as compared to their federal civilian counterparts.

Originally, the Congress intended the government to subsidize 40 percent of the cost of military Survivor Benefit Plan premiums—similar to the government's contribution to the federal civilian plan. Over the last several decades, however, there has been a significant decline in the government's cost share, and Department of Defense actuaries advise that the government subsidy is now down to less than 20 percent. This means that military retirees are now paying more than 80 percent of program costs from their retired pay versus the intended 60 percent.

Contrast this to the federal civilian SBP, which has a 52 percent cost share for those under the Civil Service Retirement System and a 67 percent cost share for those employees, including many of our own staff, under the Federal Employees Retirement System. While it is true that there are differences between the civilian and military premium costs, with federal civilians paying more, it is also true that military retirees generally retire earlier than their federal civilian counterparts, and as a result, pay premiums for many more years.

This amendment will raise, over a 3½-year period, the percentage of the retirement annuity received by the survivor from 35 percent to 55 percent after age 62. During the first year, fiscal year 2005, an open enrollment period will be held to allow new enrollees to sign up for the program in order to reduce retired pay outlays by increasing deductions of SBP premiums from retired pay, thus offsetting part of the cost of the survivor benefit increase.

Beginning on Oct. 1, 2005, the age-62 SBP annuity would increase to 40 percent of retired pay, followed by additional increases to 45 percent on April 1, 2006, 50 percent on April 1, 2007 and 55 percent on April 1, 2008 after which all survivors would receive the 55 percent of the annuity.

Once again, I ask my colleagues to support our Nation's military widows and widowers. In the National Defense Authorization Act of 2001, we included a Sense of the Congress on increasing the military SBP annuity. This year, we have a chance to carry out this intent by enacting this important measure, and I ask my colleagues to join with me in support of this legislation.

Mr. WARNER. Mr. President, I think we are ready to do a package of amendments, if I could get the attention of the ranking member.

AMENDMENTS NOS. 3414, AS MODIFIED; 3280, AS MODIFIED; 3355, AS MODIFIED; 3220; 3373, AS MODIFIED; 3459, AS MODIFIED; 3311, AS MODIFIED; 3476; 3477; 3478; 3479; 3480; 3481; 3342, AS MODIFIED; 3482; 3483; AND 3484

Mr. President, I send a series of amendments to the desk which have been cleared by myself and the ranking member. Therefore, I ask unanimous consent that the Senate consider those amendments en bloc, the amendments be agreed to, and the motions to reconsider be laid upon the table. Finally, I ask unanimous consent that any statements relating to any of these individual amendments be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. No objection.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 3414, AS MODIFIED

At the end of title XI, insert the following:

**SEC. 1107. REPORT ON HOW TO RECRUIT AND RETAIN INDIVIDUALS WITH FOREIGN LANGUAGE SKILLS.**

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

(1) The Federal Government has a requirement to ensure that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this evolving international environment.

(2) According to a 2002 General Accounting Office report, Federal agencies have shortages in translators and interpreters and an overall shortfall in the language proficiency levels needed to carry out their missions

which has adversely affected agency operations and hindered United States military, law enforcement, intelligence, counterterrorism, and diplomatic efforts.

(3) Foreign language skills and area expertise are integral to, or directly support, every foreign intelligence discipline and are essential factors in national security readiness, information superiority, and coalition peacekeeping or warfighting missions.

(4) Communicating in languages other than English and understanding and accepting cultural and societal differences are vital to the success of peacetime and wartime military and intelligence activities.

(5) Proficiency levels required for foreign language support to national security functions have been raised, and what was once considered proficiency is no longer the case. The ability to comprehend and articulate technical and complex information in foreign languages has become critical.

(6) According to the Joint Intelligence Committee Inquiry into the 9/11 Terrorist Attacks, the Intelligence Community had insufficient linguists prior to September 11, 2001, to handle the challenge it faced in translating the volumes of foreign language counterterrorism intelligence it collected. Agencies within the Intelligence Community experienced backlogs in material awaiting translation, a shortage of language specialists and language-qualified field officers, and a readiness level of only 30 percent in the most critical terrorism-related languages that are used by terrorists.

(7) Because of this shortage, the Federal Government has had to enter into private contracts to procure linguist and translator services, including in some positions that would be more appropriately filled by permanent Federal employees or members of the United States Armed Forces.

(b) REPORT.—In its fiscal year 2006 budget request, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, a plan for expanding and improving the national security foreign language workforce of the Department of Defense as appropriate to improve recruitment and retention to meet the requirements of the Department for its foreign language workforce on a short-term basis and on a long-term basis.

AMENDMENT NO. 3280

At the appropriate place, insert the following:

**SEC. . ENERGY SAVINGS PERFORMANCE CONTRACTS.**

(a) IN GENERAL.—Section 801(c) of the NationalEnergy Conservation Policy Act (42 U.S.C. 8287(c)) is amended by striking ''2003'' and inserting ''2005''.

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting '', water, or wastewater treatment'' after ''payment of energy''.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

''(C) the increased efficient use of existing water sources in either interior or exterior applications.''.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.''.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551; or

''(B) a water conservation measure that improves the efficiency of water use, is lifecycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.''.

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

(g) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

AMENDMENT NO. 3355, AS MODIFIED

On page 280, after line 22, insert the following:

**SEC. 1068. CLARIFICATION OF FISCAL YEAR 2004 FUNDING LEVEL FOR A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACCOUNT.**

For the purposes of applying sections 204 and 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199) to matters in title II of such Act under the heading ''NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'' (118 Stat.69), in the account under the heading ''INDUSTRIAL TECHNOLOGY SERVICES'', the Secretary of Commerce shall make all determinations based on the Industrial Technology Services funding level of $218,782,000 for reprogramming and transferring of funds for the Manufacturing Extension Partnership program and shall submit such a reprogramming or transfer, as the case may be, to the appropriate committees within 30 days after the date of the enactment of this Act.

AMENDMENT NO. 3220

(Purpose: To repeal the authority of the Secretary of Defense to recommend that installations be placed in inactive status as part of the recommendations of the Secretary during the 2005 round of defense base closure and realignment)

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

**SEC. 2814. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS DURING 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.**

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

AMENDMENT NO. 3373, AS MODIFIED

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

**SEC. 326. REPORT REGARDING ENCROACHMENT ISSUES AFFECTING UTAH TEST AND TRAINING RANGE, UTAH.**

(a) REPORT REQUIRED.—(1) The Secretary of the Air Force shall prepare a report that outlines current and anticipated encroachments on the use and utility of the special use airspace of the Utah Test and Training Range in the State of Utah, including encroachments brought about through actions of other Federal agencies. The Secretary shall include such recommendations as the Secretary considers appropriate regarding any legislative initiatives necessary to address encroachment problems identified by the Secretary in the report.

(2) It is the sense of the Senate that such recommendations should be carefully considered for future legislative action.

(b) SUBMISSION OF REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit the report to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate.

(c) PROHIBITION ON GROUND MILITARY OPERATIONS.—Nothing in this section shall be construed to permit a military operation to be conducted on the ground in a covered wilderness study area in the Utah Test and Training Range.

(e) COMMUNICATIONS AND TRACKING SYSTEMS.—Nothing in this section shall be construed to prevent any required maintenance of existing communications, instrumentation, or electronic tracking systems (or the infrastructure supporting such systems) necessary for effective testing and training to meet military requirements in the Utah Test and Training Range.

AMENDMENT NO. 3459, AS MODIFIED

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

**SEC. 1022. REPORTS ON MATTERS RELATING TO DETAINMENT OF PRISONERS BY THE DEPARTMENT OF DEFENSE.**

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the population of persons held by the Department of

Defense for more than 45 days and on the facilities in which such persons are held.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall include the following:

(1) General information on the foreign national detainees in the custody of the Department on the date of such report, including the following:

(A) The best estimate of the Department of the total number of detainees in the custody of the Department as of the date of such report.

(B) The countries in which such detainees were detained, and the number of detainees detained in each such country.

(C) The best estimate of the Department of the total number of detainees released from the custody of the Department during the one-year period ending on the date of such report.

(2) For each foreign national detained and registered with the National Detainee Reporting Center by the Department on the date of such report the following:

(A) The Internment Serial Number or other appropriate identification number.

(B) The nationality, if available.

(C) The place at which taken into custody, if available.

(D) The circumstances of being taken into custody, if available

(E) The place of detention.

(F) The current length of detention.

(G) A categorization as a civilian detainee, enemy prisoner of war/prisoner of war, or enemy combatant.

(H) Information as to transfer to the jurisdiction of another country, including the identity of such country.

(3) Information on the detention facilities and practices of the Department for the one-year period ending on the date of such report, including for each facility of the Department at which detainees were detained by the Department during such period the following:

(A) The name of such facility.

(B) The location of such facility.

(C) The number of detainees detained at such facility as of the end of such period.

(D) The capacity of such facility.

(E) The number of military personnel assigned to such facility as of the end of such period.

(F) The number of other employees of the United States Government assigned to such facility as of the end of such period.

(G) The number of contractor personnel assigned to such facility as of the end of such period.

(c) FORM OF REPORT.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

AMENDMENT NO. 3311, AS MODIFIED

In lieu of the matter proposed to be inserted, insert the following:

**SEC. ___. REPORT ON OFFSET REQUIREMENTS UNDER CERTAIN CONTRACTS.**

Section 8138(b) of the Department of Defense Appropriations Act, 2004 (Public Law 108–87; 117 Stat. 1106; 10 U.S.C. 2532 note) is amended by adding at the end the following new paragraph:

''(4) The extent to which any foreign country imposes, whether by law or practice, offsets in excess of 100 percent on United States suppliers of goods or services, and the impact of such offsets with respect to employment in the United States, sales revenue relative to the value of such offsets, technology transfer of goods that are critical to the national security of the United States, and global market share of United States companies.''.

AMENDMENT NO. 3476

(Purpose: To provide for appropriate coordination in the preparation of the management plan for contractor security personnel)

On page 188, beginning on line 17, strike ''Congress'' and all that follows through line 20, and insert ''the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a plan for the management and oversight of contractor security personnel by Federal Government personnel in areas where the Armed Forces are engaged in military operations. In the preparation of such plan, the Secretary shall coordinate, as appropriate, with the heads of other departments and agencies of the Federal Government that would be affected by the implementation of the plan.''.

AMENDMENT NO. 3477

(Purpose: To provide for appropriate coordination in the preparation of the report on contractor performance of security, intelligence, law enforcement, and criminal justice functions, and to add other congressional committee recipients for the report)

On page 192, after line 22, insert the following:

(c) COORDINATION.—In the preparation of the report under this section, the Secretary of Defense shall coordinate, as appropriate, with the heads of any departments and agencies of the Federal Government that are involved in the procurement of services for the performance of functions described in subsection (a).

(d) ADDITIONAL CONGRESSIONAL RECIPIENTS.—In addition to submitting the report under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

AMENDMENT NO. 3478

(Purpose: To provide for appropriate coordination in the preparation of the report on contractor security in Iraq, and to add other congressional committee recipients for the report)

On page 246, between lines 7 and 8, insert the following:

(d) COORDINATION.—In the preparation of the report under this section, the Secretary of Defense shall coordinate with the heads of any other departments and agencies of the Federal Government that are affected by the performance of Federal Government contracts by contractor personnel in Iraq.

(e) ADDITIONAL CONGRESSIONAL RECIPIENTS.—In addition to submitting the report on contractor security under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to any other committees of Congress that the Secretary determines appropriate to receive such report taking into consideration the requirements of the Federal Government that contractor personnel in Iraq are engaged in satisfying.

AMENDMENT NO. 3479

(Purpose: To provide for the space posture review to be a joint undertaking of the Secretary of Defense and the Director of Central Intelligence)

On page 249, line 16, strike ''(d)'' and insert the following:

(4) The reports under this subsection shall also be submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) JOINT UNDERTAKING WITH THE DIRECTOR OF CENTRAL INTELLIGENCE.—The Secretary of Defense shall conduct the review under this section, and submit the reports under subsection (c), jointly with the Director of Central Intelligence.

(e) * * *

AMENDMENT NO. 3480

(Purpose: To add the Select Committee on Intelligence and the Permanent Select Committee on Intelligence of the House of Representatives as recipients of the report of the panel on the future of military space launch)

On page 252, beginning on line 10, strike ''and the congressional defense committees'' and insert '', the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives''.

AMENDMENT NO. 3481

(Purpose: To add the Director of Central Intelligence as an approving official for Department of Defense assistance to Iraq and Afghanistan military and security forces in certain cases)

On page 269, line 16, before the period at the end insert ''and, in any case in which section 104(e) of the National Security Act of 1947 (50 U.S.C. 403–4(e)) applies, the Director of Central Intelligence''.

AMENDMENT NO. 3342, AS MODIFIED

(Purpose: To require a plan on the implementation and utilization of flexible personnel management authorities in Department of Defense laboratories)

At the end of title XI add the following:

**SEC. 1107. PLAN ON IMPLEMENTATION AND UTILIZATION OF FLEXIBLE PERSONNEL MANAGEMENT AUTHORITIES IN DEPARTMENT OF DEFENSE LABORATORIES.**

(a) PLAN REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Personnel and Readiness shall jointly develop a plan for the effective utilization of the personnel management authorities referred to in subsection (b) in order to increase the mission responsiveness, efficiency, and effectiveness of Department of Defense laboratories.

(b) COVERED AUTHORITIES.—The personnel management authorities referred to in this subsection are the personnel management authorities granted to the Secretary of Defense by the provisions of law as follows:

(1) Section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).

(2) Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 5 U.S.C. 3104 note).

(3) Such other provisions of law as the Under Secretaries jointly consider appropriate for purposes of this section.

(c) PLAN ELEMENTS.—The plan under subsection (a) shall—

(1) include such elements as the Under Secretaries jointly consider appropriate to provide for the effective utilization of the personnel management authorities referred to in subsection (b) as described in subsection (a), including the recommendations of the

Under Secretaries for such additional authorities, including authorities for demonstration programs or projects, as are necessary to achieve the effective utilization of such personnel management authorities; and

(2) include procedures, including a schedule for review and decisions, on proposals to modify current demonstration programs or projects, or to initiate new demonstration programs or projects, on flexible personnel management at Department laboratories

(d) SUBMITTAL TO CONGRESS.—The Under Secretaries shall jointly submit to Congress the plan under subsection (a) not later than February 1, 2006.

AMENDMENT NO. 3482

(Purpose: To express the sense of the Senate regarding the return of members of the Armed Forces to active service upon rehabilitation from service-related injuries)

On page 112, between the matter following line 5 and line 6, insert the following:

**SEC. 574. SENSE OF THE SENATE REGARDING RETURN OF MEMBERS TO ACTIVE DUTY SERVICE UPON REHABILITATION FROM SERVICE-RELATED INJURIES.**

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

(1) The generation of young men and women currently serving on active duty in the Armed Forces, which history will record as being among the greatest, has shown in remarkable numbers an individual resolve to recover from injuries incurred in such service and to return to active service in the Armed Forces.

(2) Since September 11, 2001, numerous brave soldiers, sailors, airmen, and Marines have incurred serious combat injuries, including (as of June 2004) approximately 100 members of the Armed Forces who have been fitted with artificial limbs as a result of devastating injuries sustained in combat overseas.

(3) In cases involving combat-related injuries and other service-related injuries it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume the performance of active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) members of the Armed Forces who on their own initiative are highly motivated to return to active duty service following rehabilitation from injuries incurred in their service in the Armed Forces, after appropriate medical review should be given the opportunity to present their cases for continuing to serve on active duty in varied military capacities;

(2) other than appropriate medical review, there should be no barrier in policy or law to such a member having the option to return to military service on active duty; and

(3) the Secretary of Defense should develop specific protocols that expand options for such members to return to active duty service and to be retrained to perform military missions for which they are fully capable.

AMENDMENT NO. 3483

(Purpose: To authorize, and authorize the appropriation of, $18,140,000 for military construction at Navy Weapons Station, Charleston, South Carolina, for the construction of a consolidated electronic integration and support facility to house the command and control systems engineering and design work of the Space and Naval Warfare Systems Center, Charleston, and to provide offsets, including the elimination of the authorization of appropriations of $10,358,000 for military construction at Charleston, South Carolina, for the construction of a readiness center for the Army National Guard)

On page 305, in the table preceding line 1, insert after the item relating to Naval Station Newport, Rhode Island, the following new item:

| | | |
|---|---|---|
| South Carolina. | Naval Weapons Station, Charleston. | $18,140,000 |

On page 305, in the table preceding line 1, strike the amount identified as the total in the amount column and insert ''$833,718,000''.

On page 307, line 8, strike ''$1,825,576,000'' and insert ''$1,843,716,000''.

On page 307, line 11, strike ''$676,198,000'' and insert ''$694,338,000''.

On page 314, line 7, strike ''$2,493,324,000'', as previously amended, and insert ''$2,485,542,000''.

On page 315, line 3, strike ''$863,896,000'' and insert ''$856,114,000''.

On page 322, line 15, strike ''$371,430,000'' and insert ''$361,072,000''.

AMENDMENT NO. 3484

(Purpose: To add an amount for a bed-down initiative to enable the C–130 aircraft of the Idaho Air National Guard to be the permanent carrier of the SENIOR SCOUT mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard)

On page 24, between lines 9 and 10, insert the following:

**SEC. 133. SENIOR SCOUT MISSION BED-DOWN INITIATIVE.**

(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 103(1) is hereby increased by $2,000,000, with the amount of the increase to be available for a bed-down initiative to enable the C–130 aircraft of the Idaho Air National Guard to be the permanent carrier of the SENIOR SCOUT mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $2,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Mr. WARNER. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3280

Mr. BINGAMAN. Mr. President, I am pleased to support this amendment, which I have cosponsored with the Senator from Oklahoma, to extend the Energy Savings Performance Contract program through the end of fiscal year 2005.

Our amendment is urgently needed to stem the damage being done to a very successful program that brings private sector expertise, and private sector financing, to efficiency projects that reduce the Federal Government's energy use, and energy costs.

Since the 1970's Federal Government agencies have been setting an example for the Nation on how to reduce energy waste and save money by improving their energy efficiency—spending $2.3 billion less for energy in FY2000 than in FY1985. One of the reasons for this success is the availability of Energy Savings Performance contracts, ESPCs. These contracts offer a way to make energy savings improvements at Federal facilities at no cost to the Government, by leveraging private capital. The Department of Defense has been a leader in the use of Energy Savings Performance contracts.

Under the ESPC authority enacted in 1992, private sector companies enter into contracts with Federal agencies to install energy savings equipment and make operational and maintenance changes to improve building efficiency. The company pays all of the up-front costs for making the energy efficiency improvements and guarantees the agency savings through the term of contract. The energy service company then recovers its investment, over time, by receiving a portion of the agency's energy cost savings.

Since 1992, this program has brought nearly $1.1 billion in private sector investments to Federal agencies, resulting in hundreds of millions of dollars in permanent savings to the taxpayers. The ESPC program has the support of a broad and diverse coalition of businesses, environmental groups and labor—including the U.S. Chamber of Commerce, U.S. PIRG, and the Teamsters.

Unfortunately, the statutory authority for the ESPC program expired at the end of FY2003. As a result of the program lapse, over $300 million in energy efficiency projects have been halted nationwide. Pending contacts are in limbo along with over 3,000 new jobs associated with these projects. Although I and others have made several efforts to extend the program, these efforts have been unsuccessful, primarily because the Congressional Budget Office assigns a cost to the program, unlike the Office of Management and Budget which considers the program to be budget neutral.

While the debate over proper scoring of the program goes on, the loss of new business and experienced personnel has put this program into crisis. With each passing week, the benefits and potential of ESPCs are bleeding away. At a time of high energy costs, high deficits, and high unemployment, Congress should act as soon as possible to extend ESPC authority.

I thank the managers of the bill for accepting this short-term extension amendment. I also pledge to continue working with Senator INHOFE and other supporters of the ESPC program to enact a permanent extension of this valuable efficiency program.

I ask unanimous consent that a letter from Secretary Abraham expressing administration support for the ESPC Program be printed in the RECORD.

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

THE SECRETARY OF ENERGY,
*Washington, DC, April 8, 2004.*

Hon. PETE DOMENICI,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Administration strongly supports enactment, as soon as possible, of legislation to extend the authority for Federal agencies to enter into Energy Savings Performance Contracts (ESPCs).

Congress established the ESPC program in 1992 as an innovative way to improve the Government's energy efficiency by harnessing private-sector resources to fund necessary energy-efficient improvements. However, authority to enter into new ESPC contracts expired on October 1, 2003. A short-term, one-year reauthorization would allow Federal agencies to continue making investments in energy efficiency that save energy and money and help agencies meet Federal energy conservation goals.

The Administration continues to support long-term reauthorization of the ESPC program as part of the comprehensive energy legislation currently under consideration in Congress. The legislation itself extending ESPC authority is considered budget neutral and does not require additional resources, as the Office of Management and Budget classifies all budget authority and outlays for ESPCs as absorbing discretionary resources. However, ESPCs actually save the government money, because the upfront costs of ESPC efficiency improvements are recovered through the energy savings that result. Moreover, payments to the contractors are contingent upon realizing a guaranteed stream of future cost savings.

Improved energy efficiency and conservation of Federal facilities is an important component of this Administration's commitment to the cost-effective use of public dollars and protection of the environment. The Administration urges Congress to act quickly to extend the authorization of this important program.

Sincerely,

SPENCER ABRAHAM.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I am prepared to enter into a unanimous consent agreement with the distinguished Senator from Nevada.

Mr. President, I ask unanimous consent that all pending amendments be withdrawn, with the exception of the following: Daschle, No. 3409, as amended; Leahy, No. 3387, which will have a second degree by Senator LEAHY or designee; and a series of amendments which have been cleared by both managers; I further ask consent that at 9:30 tonight the Senate proceed to a vote in relation to the Daschle amendment No. 3409, with no second degrees in order to the amendment prior to the vote; provided further that following the disposition of the Daschle amendment, the Senate vote in relation to the Leahy amendment No. 3387. I further ask consent that following the disposition of the Leahy amendment, and the disposition of the cleared amendments, the bill be read a third time and the Senate proceed to a vote on passage of the bill, with no intervening action or debate.

Before the Chair rules, I ask unanimous consent that the votes occur in reverse order than listed above.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that, first of all, it will be the Daschle amendment No. 3409, as amended.

Mr. WARNER. That is correct. If I failed to read it, it is as amended.

Mr. REID. And that the Leahy amendment No. 3387—we all know Senator LEAHY is going to offer a second-degree amendment to the underlying amendment.

Mr. WARNER. That is correct. It is in the script.

Mr. REID. And also, I say to the Senator, I want to make sure we would have the Daschle vote second and the Leahy vote first.

Mr. WARNER. If that is the preference, so granted.

Mr. REID. That would be for the convenience of the Democratic leader. I would also think it would be appropriate to have 2 minutes evenly divided prior to each vote. I would ask unanimous consent that the distinguished chairman of the committee allow the modification of his unanimous consent request as I have outlined it.

Mr. WARNER. I concur in the modification.

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

Mr. WARNER. I thank the Chair.

Mr. LEAHY. Mr. President, will the Senator yield, not to speak on my amendment but to call it up and offer the second degree now?

The PRESIDING OFFICER. Without objection, the Daschle second degree No. 3468 is agreed to.

The amendment (No. 3468) was agreed to.

AMENDMENT NO. 3485 TO AMENDMENT NO. 3387

Mr. LEAHY. Mr. President, I ask that amendment No. 3387 be called up, and I send to the desk a second-degree amendment on behalf of myself and Mr. CORZINE.

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mr. CORZINE, proposes an amendment numbered 3485 to amendment No. 3387.

Mr. LEAHY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To direct the Attorney General to submit to the Committee on the Judiciary of the Senate all documents in the possession of the Department of Justice relating to the treatment and interrogation of individuals held in the custody of the United States)

At the appropriate place, insert the following:

**SEC. ___. REQUEST FOR DOCUMENTS AND RECORDS.**

The Attorney General shall submit to the Committee on the Judiciary of the Senate all documents and records produced from January 20, 2001, to the present, and in the possession of the Department of Justice, describing, referring or relating to the treatment or interrogation of prisoners of war, enemy combatants, and individuals held in the custody or under the physical control of the United States Government or an agent of the United States Government in connection with investigations or interrogations by the military, the Central Intelligence Agency, intelligence, antiterrorist or counterterrorist offices in other agencies, or cooperating governments, and the agents or contractors of such agencies or governments.

Mr. LEAHY. I thank the distinguished manager and yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BENNETT. Mr. President, as the debate on the Defense authorization bill began, I announced my intention to offer an amendment to that bill with respect to the nuclear penetrator, or, as it is known around here, the RNEP. I have been dissuaded from offering that amendment by the arguments of some of my friends who insist it is unnecessary because it would be simply a statement of existing law. I wanted to be sure that was the case, and therefore I sought assurances from both the Department of Energy and the Department of Defense. I have handed the letters from those two Departments to my friend from Michigan. I ask if I could reclaim those letters so I might quote from them.

Mr. LEVIN. That is a fair request.

Mr. BENNETT. Linton F. Brooks, who is the Administrator of the National Nuclear Security Administration, wrote me on June 15, and he says the following things:

. . . let me state unequivocally this Administration has no current plans or requirements to conduct an underground nuclear test.

That is important to understand, that the administration has no plans to conduct an underground nuclear test of any kind.

With respect to RNEP, he says:

. . . I know you are concerned that the ongoing RNEP study could lead to the resumption of underground nuclear testing. The RNEP study will not require an underground nuclear test.

That is a very firm, unequivocal statement.

He goes on to talk about possibilities, and he says:

Should the President support, and the Congress approve, full-scale engineering development of RNEP, the Administration does not intend to conduct a nuclear test. From the beginning, we have operated under the assumption that resuming testing to certify RNEP is not an option. . . .

Those are firm assurances from the Department of Energy. But I wanted to be sure this was not just Ambassador Linton Brooks' attitude, so I had a conversation with Paul Wolfowitz at the Department of Defense. Dated June 23, he sent me a letter reaffirming what Administrator Brooks had said and makes it clear that the Department of Defense agrees there will be no nuclear test with respect to RNEP under the current administration.

So I am heartened by these assurances I have received from the Department of Defense and the Department of Energy that there is no plan or requirement to conduct an underground nuclear explosive test of any kind, and I accept these assurances. But here in the Congress I have those to whom I look for guidance on these matters. I want to be sure that should some future administration decide to change the policy that has been outlined by the Bush administration, that the present law would hinder future administrations from conducting these same tests without there being a vote of Congress; particularly with respect to RNEP, that there would be no underground nuclear test without a congressional vote.

I have asked the Senator from Arizona, who is an expert on these matters, if he would agree. I also discussed it with the Senator from Michigan, who is the ranking member on the Armed Services Committee.

If I may, Mr. President, I ask the Senator from Arizona, Mr. KYL, if he agrees that under current law, a vote from Congress would have to occur before a test could be conducted on RNEP?

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I answer the Senator from Utah, yes, I agree Congress would have to vote before a test could be conducted.

Mr. BENNETT. I thank the Senator from Arizona, Mr. President.

I would now like to address the same question to the Senator from Michigan, with his great background in the area of law concerning this.

Does the Senator from Michigan agree that under current law, a vote from Congress would have to occur before a test could be conducted for RNEP?

Mr. LEVIN. Yes. I, too, agree that Congress would have to vote before a test could be conducted.

Mr. BENNETT. I thank the Senator from Michigan. I thank the Senator from Arizona.

On the basis of their assurances, along with the written assurances I have received from this administration—two Departments speaking—I will not offer my amendment.

Mr. President, I now ask unanimous consent those two letters be printed in the RECORD.

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

DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION,
*Washington, DC, June 15, 2004.*

Hon. ROBERT BENNETT,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR BENNETT: Thank you for taking the time to meet with me on June 3, 2004, to discuss your concerns regarding the Robust Nuclear Earth Penetrator (RNEP) study and underground nuclear testing at the Nevada Test Site (NTS). I appreciate your concerns and I hope to address them in this letter.

First, let me state unequivocally this Administration has no current plans or requirements to conduct an underground nuclear test. The Stockpile Stewardship Program is working today to ensure that America's nuclear deterrent is safe, secure and reliable. Currently there are no issues of sufficient concern to warrant a nuclear test. I certainly understand the concerns you and your constituents in Utah have with nuclear testing at the Nevada Test Site. However, I believe it is critical to maintain a readiness capability at the NTS to conduct such a test in the future if called for by the President of the United States, in order to ensure the safety and/or reliability of a weapon system. Therefore, I believe it is important for us to work together to ensure that the NNSA test readiness program continues to make safety a top priority.

Furthermore, I know you are concerned that the ongoing RNEP study could lead to the resumption of underground nuclear testing. The RNEP study will not require an underground nuclear test. Should the President support, and Congress approve, full-scale engineering development of RNEP, the Administration does not intend to conduct a nuclear test. From the beginning, we have operated under the assumption that resuming testing to certify RNEP is not an option and for that reason, more than any other, the RNEP study is only looking at two existing weapon systems, the B–61 and the B–83. Both are well-proven systems with an extensive test pedigree from the 1970s and 80s. I would be happy to work with you and the Senate Armed Services Committee to address your concerns on this sensitive matter.

If you have any further questions or concerns, please do not hesitate to contact me or C. Anson Franklin, Director, Office of Congressional, Intergovernmental and Public Affairs at (202) 586–8343.

Sincerely,

LINTON F. BROOKS,
*Administrator.*

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DEPUTY SECRETARY OF DEFENSE,
*Washington, DC, June 23, 2004.*

Hon. ROBERT BENNETT,
*U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR BENNETT: I understand that you have concerns about the Department's plans to study options for a Robust Nuclear Earth Penetrator (RNEP) that would give the United States the capability to threaten hardened, deeply buried targets in hostile nations. Specifically, you have raised concerns that the development of such a system could require the resumption of underground nuclear testing.

I want to assure you that the Administration has no plans to conduct an underground nuclear test associated with the development of RNEP. As National Nuclear Security Administration Administrator Linton Brooks recently wrote to you, ''the RNEP study is only looking at two existing weapon systems, the B–61 and B–83. Both are well-proven systems with an extensive test pedigree from the 1970s and 80s.''

If RNEP were to move from its current study phase to development, such plans would be part of the Administration's annual budget request to Congress. The Administration's intentions concerning underground nuclear testing during RNEP development, if different from our current intentions, would be explicit in that request. Congress would have the opportunity at that time to debate and pass judgment on those plans.

Thank you for the opportunity to address your concerns about the Department's development of RNEP. If I can be of further assistance, I hope you will let me know.

Sincerely,

PAUL WOLFOWITZ.

***NOTICE***

***Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.***

## ORDERS FOR THURSDAY, JUNE 24, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Thursday, June 24. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to executive session for the consideration en bloc of Calendar Nos. 715 and 731, the nomination of John Danforth to be Representative to the United Nations.

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

## PROGRAM

Mr. FRIST. Mr. President, tomorrow we will begin the day with the consideration of the nomination of our former colleague to be Representative to the United Nations. The nomination will require a little debate but then will not need a vote. We will also consider judicial nominations tomorrow. Therefore, rollcall votes will occur throughout the day.