(Mr. JEFFORDS) was added as a cosponsor of S. 425, a bill to authorize the Secretary of Agriculture to sell or exchange certain National Forest System land in the State of Vermont.

S. 489

At the request of Mr. ALEXANDER, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 489, a bill to amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

S. RES. 33

At the request of Mr. LEVIN, the names of the Senator from Delaware (Mr. BIDEN) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. Res. 33, a resolution urging the Government of Canada to end the commercial seal hunt.

S. RES. 40

At the request of Ms. LANDRIEU, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. Res. 40, a resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room.

AMENDMENT NO. 15

At the request of Mr. AKAKA, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 15 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

AMENDMENT NO. 19

At the request of Mrs. FEINSTEIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 19 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

AMENDMENT NO. 24

At the request of Mr. ROCKEFELLER, the names of the Senator from Minnesota (Mr. DAYTON), the Senator from Illinois (Mr. OBAMA) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of amendment No. 24 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

AMENDMENT NO. 25

At the request of Mr. ROCKEFELLER, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of amendment No. 25 intended to be proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself, Mr. SANTORUM, and Mr. LEAHY):

S. 491. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today to introduce the Christopher Kangas Fallen Firefighter Apprentice Act, a bill designed to correct a flaw in the current definition of ''firefighter'' under the Public Safety Officer Benefits Act.

On May 4, 2002, 14-year-old Christopher Kangas was struck by a car and killed while he was riding his bicycle in Brookhaven, PA. The local authorities later confirmed that Christopher was out on his bike that day for an important reason: Chris Kangas was a junior firefighter, and he was responding to a fire emergency.

Under Pennsylvania law, 14- and 15-year-olds such as Christopher are permitted to serve as volunteer junior firefighters. While they are not allowed to operate heavy machinery or enter burning buildings, the law permits them to fill a number of important support roles, such as providing first aid. In addition, the junior firefighter program is an important recruitment tool for fire stations throughout the Commonwealth. In fact, prior to his death Christopher had received 58 hours of training that would have served him well when he graduated from the junior program.

It is clear to me that Christopher Kangas was a firefighter killed in the line of duty. Were it not for his status as a junior firefighter and his prompt response to a fire alarm, Christopher would still be alive today. Indeed, the Brookhaven Fire Department, Brookhaven Borough, and the Commonwealth of Pennsylvania have all recognized Christopher as a fallen public safety officer and provided the appropriate death benefits to his family.

Yet, while those closest to the tragedy have recognized Christopher as a fallen firefighter, the Federal Government has not. The U.S. Department of Justice (DOJ) determined that Christopher Kangas was not eligible for benefits because he was not acting within a narrow range of duties at the time of his death that are the measured criteria to be considered a ''firefighter,'' and therefore, was not a ''public safety officer'' for purposes of the Public Safety Officer Benefits Act. In order to be eligible for benefits under the Public Safety Officer Benefits Act, an officer's death must be considered the ''direct and proximate result of a personal injury sustained in the line of duty.'' Although the United States Code includes firefighters in the definition of ''public safety officer'' and specifies a firefighter as ''an individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department;'' it offers no definition of ''line of duty''. DOJ had to defer to an arbitrarily narrow definition of ''line of duty,'' as described in the Code of Federal Regulations that restricts activities to the ''suppression of fires.'' DOJ decided that the only people who qualify as firefighters are those who play the starring role of operating a hose on a ladder or entering a burning building. According to this interpretation, those, such as junior firefighters, who play the essential supporting roles of directing traffic, performing first aid, or dispatching fire vehicles do not contribute to the act of suppressing the fire.

Any firefighter will tell you that there are many important roles to play in fighting a fire beyond operating the hoses and ladders. Firefighting is a team effort, and everyone in the Brookhaven Fire Department viewed young Christopher as a full member of their team.

As a result of this DOJ determination, Christopher's family will not receive a $267,000 Federal line-of-duty benefit. In addition, Christopher will be barred from taking his rightful place on the National Fallen Firefighters Memorial in Emmitsburg, MD. For a young man who dreamed of being a firefighter and gave his life rushing to a fire, keeping him off of the memorial is a grave injustice.

The bill I introduce today will ensure that the Federal Government will recognize Christopher Kangas and others like him as firefighters. The bill clarifies that all firefighters will he recognized as such ''regardless of age, status as an apprentice or trainee, or duty restrictions imposed because of age or status as an apprentice or trainee.'' The bill applies retroactively back to May 4, 2002 so that Christopher, as well as three others, can benefit from it.

I urge my colleagues to support this important legislation.

By Mr. FRIST (for himself, Mr. REID, and Mr. LUGAR):

S. 492. A bill to make access to safe water and sanitation for developing countries a specific policy objective of the United States foreign assistance programs, and for other purposes; to the Committee on Foreign Relations.

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

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

S. 492

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Safe Water: Currency for Peace Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Water-related diseases are a human tragedy, killing and debilitating millions of people annually, preventing millions of people from leading healthy lives, and undermining development efforts.

(2) Providing safe supplies of water, and sanitation and hygiene improvements would save millions of lives by reducing the prevalence of water-borne diseases, water-based diseases, water-privation diseases, and water-related vector diseases.

(3) An estimated 1,800,000 people die of diarrhoeal diseases every year. Ninety percent of these people are children under the age of five who live in developing countries. Simple household and personal hygiene measures, such as household water treatment and safe storage and effective hand washing with soap, reduce the burden of diarrhoeal disease by more than 40 percent.

(4) According to the World Health Organization, 88 percent of diarrhoeal disease can be attributed to unsafe water supply, and inadequate sanitation and hygiene.

(5) Around the world, more than 150,000,000 people are threatened by blindness caused by trachoma, a disease that is spread through poor hygiene and sanitation, and aggravated by inadequate water supply.

(6) Chronic intestinal helminth infections are a leading source of global morbidity, including cognitive impairment and anemia for hundred of millions of children and adults. Access to safe water and sanitation and better hygiene practices can greatly reduce the number of these infections.

(7) Schistosomiasis is a disease that affects 200,000,000 people, 20,000,000 of whom suffer serious consequences, including liver and intestinal damage. Improved water resource management to reduce infestation of surface water, improved sanitation and hygiene, and deworming treatment can dramatically reduce this burden.

(8) In 2002, 2,600,000,000 people lacked access to improved sanitation. In sub-Saharan Africa, only 36 percent of the population has access to improved sanitation. In developing countries, only 31 percent of the population in rural areas has access to improved sanitation.

(9) Improved management of water resources can contribute to comprehensive strategies for controlling mosquito populations associated with life-threatening vector-borne diseases in developing countries, especially malaria, which kills more than 1,000,000 people each year, most of whom are children.

(10) Natural disasters such as floods and droughts threaten people's health. Floods contaminate drinking-water systems with industrial waste refuse, sewage, and human and animal excreta. Droughts exacerbate malnutrition and limit access to drinking water supplies. Sound water resource management can mitigate the impact of such natural disasters.

(11) The United Nations Population Fund report entitled ''Water: A Critical Resource'' stated that ''Nearly 500 million people [suffer from] water stress or serious water scarcity. Under current trends, two-thirds of the world's population may be subject to moderate to high water stress by 2025''. Effective water management and equitable allocation of scarce water supplies for all uses will become increasingly important for meeting both human and ecosystem water needs in the future.

(12) The participants in the World Summit on Sustainable Development, held in Johannesburg, South Africa, in 2002, agreed to the Plan of Implementation of the World Summit on Sustainable Development which included an agreement to work to reduce by one-half ''the proportion of people who are unable to reach or afford safe drinking water,'' and ''the proportion of people without access to basic sanitation'' by 2015.

(13) At the World Summit on Sustainable Development, building on the U.S.-Japan Partnership for Security and Prosperity announced in June 2001 by President Bush and Prime Minister Koizumi, the United States and Japan announced a Clean Water for People Initiative to cooperate in providing safe water and sanitation to the world's poor, improve watershed management, and increase the productivity of water.

(14) At the World Summit on Sustainable Development, the United States announced the Water for the Poor Initiative which committed the United States to provide $970,000,000 over 3 years to increase access to safe water and sanitation services, improve watershed management, and increase the productivity of water. During fiscal year 2004, the United States provided an estimated $817,000,000 in assistance to the Water for the Poor Initiative, including funds made available for reconstruction activities in Iraq, of which $388,000,000 was made available for safe drinking water and sanitation programs.

(15) During fiscal year 2004, the United States provided $49,000,000 in assistance for activities to provide safe drinking water and sanitation in sub-Saharan Africa, an amount that is equal to 6.5 percent of total United States foreign assistance provided for all water activities in the Water for the Poor Initiative.

(16) At the 2003 Summit of the Group of Eight in Evian, France, the members of the Group of Eight produced a plan entitled ''Water: A G8 Action Plan'' that stated that a lack of water can undermine human security. The Action Plan committed the members of the Group of Eight to playing a more active role in international efforts to provide safe water and sanitation to the world's poor by mobilizing domestic resources in developing countries for water infrastructure financing through the development and strengthening of local capital markets and financial institutions, particularly by establishing, where appropriate, at the national and local levels, revolving funds that offer local currency financings, which allow communities to finance capital-intensive water infrastructure projects over an affordable period of time at competitive rates.

(17) The G8 Action Plan also committed members of the Group of Eight to provide risk mitigation mechanisms for such revolving funds and to provide technical assistance for the development of efficient local financial markets and building municipal government capacity to design and implement financially viable projects and provide, as appropriate, targeted subsidies for the poorest communities that cannot fully service market rate debt.

(18) The United Nations General Assembly Resolution 58/217 of February 9, 2004, proclaimed ''the period from 2005 to 2015 the International Decade for Action, 'Water for Life', to commence on World Water Day, 22 March 2005'' for the purpose of increasing the focus of the international community on water-related issues at all levels and on the implementation of water-related programs and projects.

SEC. 3. WATER FOR HEALTH AND DEVELOPMENT.

(a) IN GENERAL.—Part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by inserting after section 104C the following new section:

''SEC. 104D. WATER FOR HEALTH AND DEVELOPMENT.

''(a) FINDING.—Congress makes the following findings:

''(1) Access to safe water and sanitation and improved hygiene are significant factors in controlling the spread of disease in the developing world and positively affecting economic development.

''(2) The health of children and other vulnerable rural and urban populations in developing countries, especially sub-Saharan Africa and South Asia, is threatened by a lack of adequate safe water, sanitation, and hygiene.

''(3) Efforts to meet United States foreign assistance objectives, including those related to agriculture, the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), and the environment will be advanced by improving access to safe water and sanitation and promoting sound water management throughout the world.

''(4) Developing sustainable financing mechanisms, including private sector financing, is critical to the long-term sustainability of improved water supply, sanitation, and hygiene.

''(5) The annual level of investment needed to meet the water and sanitation needs of developing countries far exceeds the amount of Official Development Assistance (ODA) and spending by governments of developing countries, so attracting greater public and private investment is essential.

''(6) Long-term sustainability in the provision of access to safe water and sanitation and in the maintenance of water and sanitation facilities requires a legal and regulatory environment conducive to private sector investment and private sector participation in the delivery of water and sanitation services.

''(7) The absence of robust domestic financial markets and sources for long-term financing are a major impediment to the development of water and sanitation projects in developing countries.

''(8) At the 2003 Summit of the Group of Eight in Evian, France, the members of the Group of Eight produced a plan entitled 'Water: A G8 Action Plan' that contemplated the promotion of domestic revolving funds to provide local currency financing for capital-intensive water infrastructure projects. Innovative financing mechanisms such as revolving funds and pooled-financings have been effective vehicles for mobilizing domestic savings for investments in water and sanitation both in the United States and in some developing countries. These mechanisms can serve as a catalyst for greater investment in water and sanitation projects by villages, small towns, and municipalities.

''(9) The G8 Action Plan also committed members of the Group of Eight to improving coordination and cooperation between donors, and such improved coordination and cooperation is essential for enlarging the beneficial impact of donor initiatives.

''(b) POLICY.—It is a major objective of United States foreign assistance—

''(1) to promote good health and economic development by providing assistance to expand access to safe water and sanitation, promote sound water management, and improve hygiene for people around the world; and

''(2) to promote, to the maximum extent practicable and appropriate, long-term sustainability in the provision of access to safe water and sanitation by encouraging private investment in water and sanitation infrastructure and services.

''(c) AUTHORIZATION.—

''(1) IN GENERAL.—To carry out the policy set out in subsection (b), the President is authorized to furnish assistance, including health information and education, to advance good health and promote economic development by improving the safety of water supplies, expanding access to safe water and sanitation, promoting sound water management, and promoting better hygiene.

''(2) LOCAL CURRENCY.—The President may use payments made in local currencies under an agreement made under title I of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1701 et seq.) to provide assistance under this section, including assistance for activities related to drilling or maintaining wells.''.

(b) CONFORMING AMENDMENT.—Section 104(c) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1704(c)) is

amended by adding at the end the following new paragraph:

''(9) SAFE WATER.—To provide assistance under section 104D of the Foreign Assistance Act of 1961 to advance good health and promote economic development by improving the safety of water supplies, including programs related to drilling or maintaining wells.''.

SEC. 4. PILOT PROGRAM FOR WATER SUSTAINABILITY INFRASTRUCTURE DEVELOPMENT AND CAPACITY BUILDING.

(a) IN GENERAL.—Section 104D of the Foreign Assistance Act of 1961, as added by section 3, is amended by adding at the end the following new subsection:

''(d) PILOT CLEAN WATER SUSTAINABILITY INFRASTRUCTURE DEVELOPMENT PROGRAM.—

''(1) AUTHORITY FOR PILOT PROGRAM.—In order to study the feasibility and desirability of a program to assist countries that have a high proportion of the population that is susceptible to water-borne illnesses as a result of a lack of basic infrastructure for clean water and sanitation, the President, in close coordination with the Administrator of the United States Agency for International Development and the Director of the Overseas Private Investment Corporation, is authorized to establish a 5-year pilot program under which the President may—

''(A) provide for the issuance of investment insurance, investment guarantees, or loan guarantees, provide for direct investment or investment encouragement, or carry out special projects and programs for eligible investors to assist such countries in the development of safe drinking water and sanitation infrastructure programs; and

''(B) provide assistance to support the activities described in subparagraphs (A) through (D) of paragraph (2) for the purposes of—

''(i) carrying out the policy set out in subsection (b); and

''(ii) maximizing the effectiveness of assistance provided under subparagraph (A).

''(2) ACTIVITIES SUPPORTED.—Assistance provided to a country under paragraph (1)(B) shall be used to—

''(A) assess the water development needs of such country;

''(B) design projects to address such water development needs;

''(C) develop the capacity of individuals and institutions in such country to carry out and maintain water development programs through training, joint work projects, and educational programs; and

''(D) provide long-term monitoring of water development programs.

''(3) GEOGRAPHIC LIMITATION.—The President may only provide assistance under the pilot program under paragraph (1) to a country based on consultation with Congress.

''(4) ADDITIONAL CRITERIA.—In making determinations of eligibility under this subsection, the President should give preferential consideration to projects sponsored by or significantly involving United States small businesses or cooperatives.

''(5) IMPLEMENTATION.—To the extent provided for in advance in appropriations Acts, the President is authorized to create such legal mechanisms as may be necessary for the implementation of its authorities under this subsection. Such legal mechanisms may be deemed non-Federal borrowers for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

''(6) LOAN GUARANTEES.—Notwithstanding any other provision of law, the President is authorized to provide assistance under the pilot program under paragraph (1) in the form of partial loan guarantees, provided that such a loan guarantee may not exceed 75 percent of the total amount of the loan.

''(7) COORDINATION.—The President is authorized to coordinate the activities of each agency or department of the United States to provide to a country assistance for an activity described in subparagraphs (A) through (D) of paragraph (2).

''(8) FEDERAL AGENCY RESPONSIBILITIES.—Under the direction of the President, the head of each agency or department of the United States is authorized to assign, detail, or otherwise make available to the Department of State any officer or employee of such agency or department who possesses expertise related to an activity described in subparagraphs (A) through (D) of paragraph (2).

''(9) REPORT TO CONGRESS.—The President shall annually prepare and submit to the Committee on Appropriations, the Committee on Foreign Relations, and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Appropriations, the Committee on International Relations, and the Committee on Energy and Commerce of the House of Representatives a report concerning the implementation of the pilot program under this subsection.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective during the 5-year period beginning on the date of enactment of this Act.

SEC. 5. SAFE WATER STRATEGY.

(a) REQUIREMENT FOR STRATEGY.—The Secretary of State, in close coordination with the Administrator of the United States Agency for International Development and in consultation with other appropriate Federal agencies, appropriate international organizations, foreign governments, United States nongovernmental organizations, and other appropriate entities, shall develop and implement a strategy to further the United States foreign assistance objective to promote economic development by promoting good health through the provision of assistance to expand access to safe water and sanitation, to promote sound water management, and to improve hygiene for people around the world.

(b) CONTENT.—The strategy required by subsection (a) shall include—

(1) an assessment of the activities that have been carried out, or that are planned to be carried out, by the United States to improve hygiene or access to safe water and sanitation by underserved rural or urban poor populations, the countries of sub-Saharan Africa, or in countries that receive assistance from the United States Agency for International Development;

(2) methods to achieve long-term sustainability in the provision of access to safe water and sanitation, the maintenance of water and sanitation facilities, and effective promotion of improved hygiene, in the context of appropriate financial, municipal, health, and water management systems;

(3) methods to use United States assistance to promote community-based approaches, including the involvement of civil society, to further the objectives described in subsection (a);

(4) methods to mobilize and leverage the financial, technical, and managerial expertise of businesses, governments, nongovernmental, and civil society in the form of public-private alliances such as the Global Development Alliances of the Agency which encourage innovation and effective solutions for improving sustainable access to safe water and sanitation;

(5) goals to further the objectives described in subsection (a) and methods to measure whether progress is being made to meet such goals, including indicators to measure progress and procedures to regularly evaluate and monitor progress;

(6) assessments of the challenges and obstacles that impede the provision of access to safe water and sanitation, as well as the improvement of hygiene practices, critical in developing countries;

(7) assessments of how access to safe water, sanitation, and hygiene programs, as well as water resource programs, effectively support the goal of combating the human immunodeficiency virus (HIV) and the acquired immune deficiency syndrome (AIDS);

(8) assessments of the roles that other countries or entities, including international organizations, could play in furthering such objective and mechanisms to establish coordination among the United States, foreign countries, and other entities;

(9) assessments of the level of resources that are needed each year to further such objective; and

(10) methods to coordinate and integrate programs of the United States to further such objective with other United States foreign assistance programs.

(c) REPORTS TO CONGRESS.—

(1) INITIAL REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall submit to Congress a report that describes the strategy required by subsection (a).

(2) REPORT.—Not less than once every 2 years after the submission of the initial report under paragraph (1), the President shall submit to Congress a report on the status of the implementation of the strategy and progress made in achieving the objective described in subsection (a).

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for each of the fiscal years 2006 through 2011 such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) OTHER AMOUNTS.—Amounts appropriated pursuant to the authorization of appropriations in subsection (a) shall be in addition to the amounts otherwise available to carry out this Act and the amendments made by this Act.

By Mr. GRASSLEY (for himself, Mr. COCHRAN, Mr. LOTT, and Mr. BUNNING):

S. 493. A bill to amend title II of the Higher Education Act of 1965 to increase teacher familiarity with the educational needs of gifted and talented students, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. GRASSLEY. Mr. President, I am reintroducing a bill I proposed in the last Congress to help prepare new teachers to recognize and meet the needs of gifted and talented students. According to the federally funded National Research Center on the Gifted and Talented, the large majority of gifted and talented students spend at least 80 percent of their time in a regular education classroom. Of course, gifted students are not gifted only 20 percent of the time. They are gifted all the time. Unfortunately, the lack of teacher preparation means that gifted students are not being challenged during much of the time they spend in the classroom. Their educational needs are not being met.

Unfortunately, there are many misconceptions about the needs of gifted children. You might say, ''Why should we worry about these children? They

are the smart ones that the teacher doesn't have to spend so much time on.'' First of all, I'm not talking about your average straight A student who maybe learns the material easily, but much the same way as other students in the classroom. What makes a child gifted and talented is not how well the child does in school, but how he or she learns. A straight A student may or may not be gifted and a gifted student may not always get good grades in school. Gifted and talented children actually have a different way of looking at the world. They tend to have distinct approaches to learning and interacting socially, and they frequently learn at a different pace, and to different depths, than others their age. The bottom line is that gifted and talented children have unique learning needs that need to be met in order for them to achieve to their potential.

To illustrate this point, I would like to remind the Senate of an example I first cited two years ago while speaking on another piece of legislation related to gifted and talented students. It concerns a young elementary school student from Iowa City named Jose. Jose was not putting much effort into his schoolwork and was getting bad grades. He was a good kid but he also had a tendency to act up in class. He got along with his classmates, but didn't have many friends. Jose's teacher was frustrated and couldn't figure out what to do with him. Still, Jose's parents saw in him a real hunger for learning and had his IQ tested over the summer. It turns out that what the teacher saw as behavior problems or a lack of work ethic were really symptoms of a gifted student who was not being properly challenged. Jose started leaving his regular classroom a couple of times a week to work with a teacher who was trained in meeting the needs of gifted students. As a result of the added stimulation he received, Jose started to enjoy school more, made friends with his gifted peers, and began to succeed with his regular school work.

Jose was fortunate that his parents were so perceptive and were able to have him assessed privately. However, not all parents are in a position to recognize the signs of giftedness or to advocate for their child's needs. Even in schools where there are active gifted and talented programs, many students go unidentified. Moreover, even with pull-out programs like the one I described that supplement the classroom experience and other strategies like grade skipping, it is inevitable that many gifted students will spend much of their time in a regular classroom with non-gifted students of the same age but far different ability levels. This is not necessarily a bad thing, but it means that all classroom teachers should have at least a basic knowledge about how to recognize and meet the needs of gifted and talented students in their classrooms. However, a national survey of third and fourth grade teachers by the National Research Center on the Gifted and Talented found that 61 percent of teachers had no training whatsoever in teaching highly able students.

Only one State currently requires regular classroom teachers to have coursework in gifted education. Some of the techniques used in classrooms to accommodate gifted kids include differentiated curriculum, cluster grouping, and accelerated learning. The time to make sure teachers have the necessary knowledge is when prospective teachers are in their pre-service teacher training programs. If teachers aren't exposed to information and strategies to meet the needs of gifted students in their pre-service training, they may never acquire the necessary knowledge and skills. With the Higher Education Act due for reauthorization, this is the perfect opportunity to encourage schools of education and States to take a greater look at how they can improve teacher preparation programs to integrate instruction on the unique needs of gifted learners.

Title II of the Higher Education Act already contains grants designed to enhance the quality of teacher preparation programs. My bill would simply add allowable uses to these existing grants to provide an incentive for states and teacher training programs to incorporate the needs of gifted and talented students into teacher preparation and licensure requirements. I should point out that this change would not cost the taxpayers any additional money.

Under current law, Title II State grants are awarded directly to States and are to be used to reform State teacher preparation requirements. The law lists seven potential reforms under the allowable uses for grant funds. The first three allowable uses include: strengthening state requirements for teacher preparation programs to ensure teachers are highly competent in their respective academic content areas, reforming certification and licensure requirements with respect to competency in content areas, and providing alternatives to traditional teacher preparation programs. My legislation would add another allowable use, referencing these three reforms, to encourage states to incorporate a focus on the learning needs of gifted and talented students into reforms of state requirements for teacher preparation programs, reforms of state certification and licensure requirements, or new alternative teacher preparation programs. In addition, my bill would add a new allowable use so that States could use grant funds to create or expand new-teacher mentoring programs on the needs of gifted and talented students. This way, new teachers could learn from veteran teachers about how to identify classroom indicators of giftedness and provide appropriate instruction to gifted students.

My bill would also add language to the Partnership Grants, which provide funds to partnerships among teacher preparation institutions, school of arts and sciences, and high-need school districts to strengthen new teacher education. These grants come with three required uses, including reforming teacher preparation programs to ensure teachers are highly competent in academic content areas, providing preservice clinical experience, and creating opportunities for enhanced and ongoing professional development. One allowable use for which a partnership may use funds is preparing teachers to work with diverse populations, including individuals with disabilities and limited English proficient individuals. To this section, my legislation would add gifted and talented students. Recognizing that every teacher could have gifted students in his or her classroom, my bill would also add a new allowable use so that teacher preparation programs could use the funds to infuse teacher coursework with units on the characteristics of high-ability learners. In other words, the idea is not to require additional courses, but rather to discuss how to accommodate for the needs of gifted students throughout the teacher preparation curriculum when new teachers are learning how to present lessons.

Again, my bill does not create a new grant program and doesn't cost any more money. It simply provides an incentive through existing grant programs to encourage States and teacher preparation programs to make sure that new teachers have the skills they will need to identify and meet the unique needs of the gifted and talented students who will be in their classrooms. I think we all recognize how important a quality teacher can be in helping a student achieve. This is no less true with gifted and talented students. Having a teacher that is equipped to meet the unique needs of gifted students can mean the difference between a child hating school and a child loving school; a child falling behind, and a child succeeding beyond all expectations. When a gifted child is left behind, the loss of human potential is doubly tragic. Gifted and talented children are a national resource that we must nurture now for our nation's future. This modest step could reap rewards for generations to come. I urge my colleagues to join me in this investment in our future.

By Mr. AKAKA (for himself, Ms. COLLINS, Mr. GRASSLEY, Mr. LEVIN, Mr. LEAHY, Mr. VOINOVICH, Mr. LIEBERMAN, Mr. COLEMAN, Mr. DURBIN, Mr. DAYTON, Mr. PRYOR, Mr. JOHNSON, Mr. LAUTENBERG, and Mr. CARPER):

S. 494. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure

protections, provide certain authority for the Special Counsel, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President. Today I rise to reintroduce the Federal Employee Protection of Disclosures Act, which was unanimously reported out of the Senate Homeland Security and Governmental Affairs Committee last year with strong bipartisan support. I am joined again in this effort by Senator COLLINS, chairman of the committee, whose focus on this issue and willingness to work with me in developing this legislation demonstrates how important it is to ensure that Federal employees are protected when they disclose government waste, fraud, and abuse. I am pleased to be joined by our committee's ranking member, Senator Lieberman.

Once again, I am proud to have the support of Senator CHARLES GRASSLEY and Senator CARL LEVIN, both of whom are longstanding advocates of Federal whistleblowers. My colleagues from Iowa and Michigan championed the 1989 Whistleblower Protection Act and have supported my legislation since 2001. Their support, along with the strong bipartisan support of Senators LEAHY, VOINOVICH, COLEMAN, DURBIN, DAYTON, PRYOR, JOHNSON, LAUTENBERG, and CARPER demonstrates the importance of this good government legislation.

Our legislation will strengthen the protections given to Federal whistleblowers and encourage employees to come forward to disclose government waste, fraud, and abuse. Providing meaningful protection to whistleblowers fosters an environment that promotes the disclosure of government wrongdoing and mismanagement that may adversely affect the American public. If Federal employees fear reprisal for blowing the whistle, we fail to protect the whistleblower, taxpayers, and, in notable instances, national security and our public health.

The most recent example is the disclosure by Dr. David Graham of the Food and Drug Administration, FDA, who exposed problems at the FDA regarding the safety of new pharmaceuticals. By revealing the threat posed to public health and the safety of pharmaceuticals currently on the market, as well as the organizational structure of the Center for Drug Evaluation and Research, CDER, and CDER's internal conflict of interest in evaluating the safety of drugs both pre- and post-marketing, Dr. Graham risked his career to report hazards to our public health.

As a direct result of Dr. Graham's decision to speak publicly, Americans are now more aware of the potential risks of various pharmaceuticals and government leaders are seeking ways to increase transparency of the oversight of new medications. Two weeks ago, the FDA announced the creation of a new Drug Safety Oversight Board to monitor the safety of prescription and over-the-counter drugs on the market more effectively. This new board is aimed at eliminating the conflict of interest found under the current CDER structure as disclosed by Dr. Graham.

Other examples of whistle blowers who uncovered government mismanagement and threats to public safety include: Ms. Colleen Rowley who disclosed institutional problems at the Federal Bureau of Investigation prior to 2001 which affected national security, Mr. Richard Foster, who sought to disclose the actual cost of pending Medicare legislation to Congress, and Border Patrol Agents Mark Hall and Bob Lindemann, who revealed security lapses at our northern border immediately after September 11, 2001.

In spite of the positive changes resulting from their disclosures, we are concerned that the very public struggles these individuals have endured after alerting Americans to waste, fraud, abuse, and security and health violations in the Federal Government may discourage others from coming forward. The root of these struggles lies in part with problems with the current legal structure and interpretation of the Whistleblower Protection Act. As a result of recent court decisions, legitimate whistleblowers have been denied adequate protection from retaliatory I practices. In fact, Federal whistleblowers have prevailed on the merits of their claims before the Federal Circuit Court of Appeals, which has sole jurisdiction over Federal employee whistleblower appeals, only once since 1994.

To address these issues, our legislation would clarify congressional intent regarding the scope of protection provided to whistleblowers; provide for an independent determination as to whether a whistleblower was retaliated against by the revocation of his or her security clearance; establish a pilot program to suspend the Federal Circuit Court of Appeals' monopoly on Federal employee whistleblower cases for a period of five years; and provide the Office of Special Counsel, which is charged with representing the interests of Federal whistleblowers, the authority to file amicus briefs with federal courts in support of whistleblowers.

Several of the provisions in the legislation reflect our efforts to address concerns raised by the Justice Department. While the Department still has objections to the intent of the legislation, partially because of its role in representing the interests of the alleged retaliatory agencies, I will continue to work with the Department. I am optimistic that we can reach an agreement on this good government measure in the near future.

Congress has a duty to provide strong and meaningful protections for Federal whistleblowers. Only when Federal employees are confident that they will not face retaliation will they feel comfortable coming forward to disclose information that can be used to improve government operations, our national security, and the health of our citizens. I look forward to working with my colleagues to make this goal a reality.

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

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

S. 494

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

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employee Protection of Disclosures Act''.

(b) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation'';

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''; and

(3) by adding at the end the following:

''(C) any disclosure that—

''(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

''(I) any violation of any law, rule, or regulation;

''(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

''(III) a false statement to Congress on an issue of material fact; and

''(ii) is made to—

''(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

''(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

''(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.''.

(c) COVERED DISCLOSURES.—Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking ''and'' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross management, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(d) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by amending the matter following paragraph (12) to read as follows:

''This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress, except that an employee or applicant may be disciplined for the disclosure of information described in paragraph (8)(C)(i) to a Member or employee of Congress who is not authorized to receive such information. For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that they have disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee would reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

(e) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking ''and'' after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;''.

''(xii) a suspension, revocation, or other determination relating to a security clearance or any other access determination by a covered agency;

''(xiii) an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; and''.

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking ''or'' at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

''(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling'; or

''(14) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section.''.

(3) BOARD AND COURT REVIEW OF ACTIONS RELATING TO SECURITY CLEARANCES.—

(A) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

''§ 7702a. Actions relating to security clearances

''(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance or access determination, the Merit Systems Protection Board or any reviewing court—

''(1) shall determine whether paragraph (8) or (9) of section 2302(b) was violated;

''(2) may not order the President or the designee of the President to restore a security clearance or otherwise reverse a determination of clearance status or reverse an access determination; and

''(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

''(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regards to a security clearance or access determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall conduct a review of that suspension, revocation, access determination, or other determination, giving great weight to the Board or court judgment.

''(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, access determination, or other determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, other determination, or access determination. A report under this paragraph shall include any proposed agency action with regards to the security clearance or access determination.

''(c) An allegation that a security clearance or access determination was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.

''(d) For purposes of this section, corrective action may not be ordered if the agency demonstrates by a preponderance of the evidence that it would have taken the same personnel action in the absence of such disclosure.''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

''7702a. Actions relating to security clearances.''.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency; and

''(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

(g) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking ''agency involved'' and inserting ''agency where the prevailing party is employed or has applied for employment''.

(h) DISCIPLINARY ACTION.—Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under paragraph (8) or (9) of section 2302(b) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

(i) SPECIAL COUNSEL AMICUS CURIAE APPEARANCE.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

''(h)(1) The Special Counsel is authorized to appear as amicus curiae in any action brought in a court of the United States related to any civil action brought in connection with section 2302(b) (8) or (9), or subchapter III of chapter 73, or as otherwise authorized by law. In any such action, the Special Counsel is authorized to present the views of the Special Counsel with respect to compliance with section 2302(b) (8) or (9) or subchapter III of chapter 77 and the impact court decisions would have on the enforcement of such provisions of law.

''(2) A court of the United States shall grant the application of the Special Counsel to appear in any such action for the purposes described in subsection (a).''.

(j) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b)(1) of title 5, United States Code, is amended to read as follows:

''(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2), a petition to review a final order or final decision of the

Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

''(B) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, a petition to review a final order or final decision of the Board in a case alleging a violation of paragraph (8) or (9) of section 2302(b) shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2).''.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Federal Employee Protection of Disclosures Act, this paragraph shall apply to any review relating to paragraph (8) or (9) of section 2302(b) obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting paragraph (8) or (9) of section 2302(b). If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.''.

(k) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ''These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.''.

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(l) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (6 U.S.C. 133(c)) is amended by adding at the end the following: ''For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.''.

(m) ADVISING EMPLOYEES OF RIGHTS.—Section 2302(c) of title 5, United States Code, is amended by inserting '', including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures'' after ''chapter 12 of this title''.

(n) SCOPE OF DUE PROCESS.—

(1) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(2) INDIVIDUAL ACTION.—Section 1221(e)(2) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(o) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

By Mr. CORZINE (for himself, Mr. BROWNBACK, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mr. LIEBERMAN, Mr. TALENT, Mr. DEWINE, and Mr. COBURN):

S. 495. A bill to impose sanctions against perpetrators of crimes against humanity in Darfur, Sudan, and for other purposes; to the Committee on Foreign Relations.

Mr. CORZINE. Mr. President, I rise to talk about the Darfur Accountability Act. This is an issue that I and a number of my colleagues have as much passion about and as much conviction and concern as anything that we could speak about on this floor. As we stand here today, 225,000, maybe more, Darfurians in the Sudan have died over the last 2 years. A million and three quarters are displaced, living in camps. Senator BROWNBACK is a cosponsor of the Darfur Accountability Act, along with Senators DEWINE, TALENT, DODD, DURBIN, FEINGOLD, and LIEBERMAN—a bipartisan basis. All believe strongly and passionately that we need to act now.

This bill, which we will be introducing today, provides the tools, the authorities to confront the crisis of humanity that is taking place in Darfur. It can be a reflection of our Nation's commitment to live up to the most solemn promise of our time and our Nation's values—to never stand by quietly while genocide goes forth, while genocide rages in a part of the world. ''Never again'' is the rallying cry we have all heard from the tragedy of World War II, from the response and understanding of the tragedy of Rwanda and genocides across history. Man's horrific treatment of his fellow man in genocide must be stood up against, must be pushed back against. We must say no.

It has been more than 7 months since the resolution introduced by Senator BROWNBACK and myself declaring the atrocities in Darfur to be declared genocide passed the Senate. It has been more than 7 months since the House of Representatives passed a similar resolution. And it has been 6 months since Secretary of State Colin Powell made the same declaration.

Genocide continues. Just 1 month ago a U.N. commission confirmed a litany of atrocities that have become all too familiar in this situation:

> Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement throughout Darfur.

It has been going on for 2 years. The report stated that the atrocities were ''conducted on a widespread and systematic basis,'' and that the ''magnitude and large-scale nature of some crimes against humanity, as well as their consistency over a long period of time, necessarily imply that these

crimes result from a central planning operation.''

This is public policy in the Sudan—public policy. Maybe more compelling is a series of articles, two of which I will put into the RECORD, that are reflective of the public and transparent and dogged coverage by a New York Times columnist, Nicholas Kristof, which document completely the nature of the atrocities going on, including, unfortunately, some of the pictorial efforts that bring forth the certainty that genocide is taking place.

I will submit a column written on February 23, ''The Secret Genocide Archive,'' which carries pictures in the New York Times of some of the outcomes of our failure to act. Then there is a second column which I will put into the RECORD. It is in today's paper, March 2, 2005, ''The American Witness,'' where a U.S. marine on the ground, a captain in the Marine Corps, is citing and stating and documenting the continuation of this tragedy in the lives of these people in Darfur.

I ask unanimous consent that these articles be printed in the RECORD.

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

[From the New York Times, Mar. 2, 2005]

THE AMERICAN WITNESS

(By Nicholas D. Kristof)

American soldiers are trained to shoot at the enemy. They're prepared to be shot at. But what young men like Brian Steidle are not equipped for is witnessing a genocide but being unable to protect the civilians pleading for help.

If President Bush wants to figure out whether the U.S. should stand more firmly against the genocide in Darfur, I suggest that he invite Mr. Steidle to the White House to give a briefing. Mr. Steidle, a 28-year-old former Marine captain, was one of just three American military advisers for the African Union monitoring team in Darfur—and he is bursting with frustration.

''Every single day you go out to see another burned village, and more dead bodies,'' he said. ''And the children—you see 6-month-old babies that have been shot, and 3-year-old kids with their faces smashed in with rifle butts. And you just have to stand there and write your reports.''

While journalists and aid workers are sharply limited in their movements in Darfur, Mr. Steidle and the monitors traveled around by truck and helicopter to investigate massacres by the Sudanese government and the janjaweed militia it sponsors. They have sometimes been shot at, and once his group was held hostage, but they have persisted and become witnesses to systematic crimes against humanity.

So is it really genocide?

''I have no doubt about that,'' Mr. Steidle said. ''It's a systematic cleansing of peoples by the Arab chiefs there. And when you talk to them, that's what they tell you. They're very blunt about it. One day we met a janjaweed leader and he said, 'Unless you get back four camels that were stolen in 2003, then we're going to go to these four villages and burn the villages, rape the women, kill everyone.' And they did.''

The African Union doesn't have the troops, firepower or mandate to actually stop the slaughter, just to monitor it. Mr. Steidle said his single most frustrating moment came in December when the Sudanese government and the janjaweed attacked the village of Labado, which had 25,000 inhabitants. Mr. Steidle and his unit flew to the area in helicopters, but a Sudanese general refused to let them enter the village—and also refused to stop the attack.

''It was extremely frustrating—seeing the village burn, hearing gunshots, not being able to do anything,'' Mr. Steidle said. ''The entire village is now gone. It's a big black spot on the earth.''

When Sudan's government is preparing to send bombers or helicopter gunships to attack an African village, it shuts down the cell phone system so no one can send out warnings. Thus the international monitors know when a massacre is about to unfold. But there's usually nothing they can do.

The West, led by the Bush administration, is providing food and medical care that is keeping hundreds of thousands of people alive. But we're managing the genocide, not halting it.

''The world is failing Darfur,'' said Jan Egeland, the U.N. under secretary general for humanitarian affairs. ''We're only playing the humanitarian card, and we're just witnessing the massacres.''

President Bush is pushing for sanctions, but European countries like France are disgracefully cool to the idea—and China is downright hostile, playing the same supportive role for the Darfur genocide that it did for the Khmer Rouge genocide.

Mr. Steidle has just quit his job with the African Union, but he plans to continue working in Darfur to do his part to stand up to the killers. Most of us don't have to go to that extreme of risking our lives in Darfur—we just need to get off the fence and push our government off, too.

At one level, I blame President Bush—and, even more, the leaders of European, Arab and African nations—for their passivity. But if our leaders are acquiescing in genocide, that's because we citizens are passive, too. If American voters cared about Darfur's genocide as much as about, say, the Michael Jackson trial, then our political system would respond. One useful step would be the passage of the Darfur Accountability Act, to be introduced today by Senators Jon Corzine and Sam Brownback. The legislation calls for such desperately needed actions as expanding the African Union force and establishing a military no-fly zone to stop Sudan from bombing civilians.

As Martin Luther King Jr. put it: ''Man's inhumanity to man is not only perpetrated by the vitriolic actions of those who are bad. It is also perpetrated by the vitiating inaction of those who are good.''

Mr. CORZINE. Mr. President, we are truly at a historic moment. The U.N. Commission confirmed that these atrocities were continuing even as it was doing its investigation. By the way, we just released from the U.S. State Department a report on human rights practices in countries around the world. The February 28 report reconfirmed our own Government's view that what is taking place is genocide.

We bear the responsibility that came out of the Holocaust to remember the horrors that lead to genocide. That is why we passed the genocide convention, and it is time to act. That is what this accountability act is all about. It has a lot of detail in it. But the fact is, it is to get us up and moving. I could use a little more graphic language. We have no right to stand by while human life is being taken day after day and displacement is taking place day after day. All over this country, people of faith of all denominations, student groups, and people from all walks of life are speaking out about this in our churches, our community centers, everywhere. They expect our Government and the international community to act. The time to act is now.

Let me describe the legislation, if I may. First, it reconfirms that genocide continues in Darfur. Last week, Human Rights reported new accounts of rapes, tortures, and mutilations from eyewitnesses. This needs to be dealt with. There is little doubt whatsoever that this continues. Again, I refer to the Kristof articles, which are very graphic in their explanation. Reflecting on time, I will not go through the details. There are many of these accounts.

There is no reason to turn our backs on this issue. Remember the imperative: Never again. This legislation offers specifics about how the genocide should be stopped. It calls for a military no-fly zone in Darfur. This discussion about no-fly zones has been going on for the better part of a year. It is time to make sure that we as an international community, as a nation, stand up and say, let's implement that.

Recent reports state that as recently as January, the Government of Sudan used aircraft and helicopters to impose its desire in implementing its genocide on the people of Darfur along with the jingaweit militia, which are notorious about implementing this.

The legislation also lays out the report for the African Union mission in Darfur. In September of last year, the Senate passed an amendment by Senator DEWINE and myself that sets aside $75 million in aid to the African Union so they could accelerate their monitoring and assistance on the ground in Darfur. So far, we have begun to use some of those resources. I think at this point it is about $20 million. Unfortunately, the authorization was for 3,300 African Union troops on the ground, but there are about 1,800 there today. This is 7 months after our efforts to get this done. We need to stop the killing now. That means we need to get the troops on the ground now; we have to spend the money now. It is absolutely time that we stand up and take notice and move on this issue.

The legislation also provides specifics about what should be done in a new U.N. Security Council resolution, including sanctions that have previously been threatened by the council but never imposed. For instance, we have an arms embargo against the government in Darfur. We don't have an arms embargo against the Government of Sudan. We have one in Darfur. So they can get the guns and military equipment into Khartoum, and I guess we think somehow they are not going to use it where they are actually taking the lives of the people in Darfur. It is crazy that we have such a limited and ineffectual arms embargo on Sudan. We need to act. It is clear that

we needed it last summer, and it is clear that we need it today.

I was offered the opportunity to visit Darfur last August during that 30-day period when the U.N. Security Council was examining whether Sudan was moving to correct some of the problems, get control of the jingaweit, and actually respond to the international community's imperative that they change their actions. It was clear then that the only thing that was moving the Sudanese Government was the transparency that both journalists and the international community were providing the people who were on the ground, but they had no real interest in stopping the jingaweit or the tragedy on the ground in Darfur. None. It was only pressure from the outside that was going to have any impact on moving forward.

Unfortunately, from that moment on, we have stepped back. We said we were going to do things, and we did not. Guess what. The tragedy continues and has accelerated in many places, particularly south Darfur. It is time to act.

I will save going through the rest of the pieces of legislation, but I hope my colleagues will keep in mind that we have had over 200,000 deaths and one and three-quarter million people displaced, more or less. Nobody is certain of the numbers. Estimates are that 10,000 people die a month in Darfur. Do we have to wake up and understand that we have ''Rwanda 2'' on our hands to act? Do we have to have some incredible tragedy at a single point in time for us to act? It is time to put down serious accountability requirements on the Government of Sudan and to act to stop the killing in Darfur. I can only say that there is nothing that reflects our moral values in this country more than standing up to genocide. Our humanity is being challenged, the very essence of who we are as human beings. Genocide is evil. It should be stopped, and we should remember the imperative: Never again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, let me salute the Senator from New Jersey, Mr. CORZINE, as well as Senator BROWNBACK, a Democrat and a Republican, one from the east coast and another from the Midwest, for bringing to the Senate floor today the issue of Darfur. They have been leaders in this issue. I can recall Senator CORZINE as the first Member of the Senate standing up and making a point many months ago about the senseless killing going on in the Sudan and the fact that the United States could not turn a blind eye to this issue. He returned to the floor today with the same message. I commend him for his humanitarian commitment to the poor people who are losing their lives in this conflict.

A little over a week ago in Chicago, IL, we had the visit of a rather famous man. He was a man who none of us knew and, frankly, could not even pronounce his name. He came to tell a story. His name is Paul Rusesabagina. He is the manager of the hotel in Hotel Rwanda, which has become a very famous film. He had a luxury hotel in Rwanda in the midst of the terrible genocide. Because of his personal courage and the fact that he was willing to stand up, he saved over 1,200 lives of people who sought refuge in the hotel, who otherwise would have been hacked to death by machete during the Rwanda genocide. He came to Chicago, to St. Sabinas Church on the South Side, where Father Michael Flager was his host. He told the story of Rwanda. It wasn't just a reminiscence of history; he told us that we needed to look today to the genocides we face in the world. He pointed specifically to Darfur in Sudan.

He asked us what was asked of many during the Rwanda genocide: What will you do now that you know that innocent people are being killed by the hundreds of thousands? What will you do? Will you ignore it because it is so far away? Will you ignore it because it is Africa? Will you ignore it because it may call for sacrifice on the part of U.S. leadership?

It is a challenge he made to us, an interesting challenge from a man who literally risked his life to save others during a genocide. He asked us, in our comfort in America, whether we were willing to risk anything to save these victims in Darfur. He touched my soul, and I told him that when I get back to Washington, I will take to the floor of the Senate and raise this issue as often as I can. I will try everything I can find to move the United States into a stronger position of leadership.

Yesterday, President Bush invited about 20 leaders in Congress to the White House for a briefing on his trip to Europe. It was an excellent briefing. We were allowed to ask questions at the end. I asked the President, with Steven Hadley close at hand: What are we going to do about Darfur? Sadly, the response was what I have heard over and over again from so many different sources: We are going to count on the African Union, a group of soldiers from Africa who are moving into the region. How many soldiers are moving into this region where helpless people are being killed? Their best estimates are 3,000 soldiers. How big is this region? It is about the size of the State of Texas. How in the world can we expect to have an impact on this senseless killing?

That is why I am supporting this Darfur Accountability Act. This bill we are pushing seeks to prod the world to do what it needs to do to stop the genocide in Sudan. ''Genocide'' is a word this is rarely used in human history. There have been genocides against the Armenian people and the Jewish people during the Holocaust, perhaps in Pol Pot's times in Cambodia, and other times we can point to. Rarely do we use the word. It is a word that is freighted with responsibility. You cannot just say there is genocide in some part of the world and isn't that a shame. We signed a genocide treaty that said once we detect a genocide, we go to international organizations—the United States does—and demand action. So using the word ''genocide,'' as the Bush administration has done, is a good thing because it prods us to do something, but it is a challenge that we must meet on something this timely and important.

This act calls for the United States to call on the United Nations to immediately take action in Darfur. Some will say, well, that is pointless; Russia and China will veto that action in the Security Council. Regardless, we should force the issue to a vote. We should confront the Russians and the Chinese and ask them what they would do in light of this senseless killing.

The horrific stories keep piling up. The jingaweit, the armed militias, running amok in Darfur are killing innocent people right and left. Sudanese aircraft strafed a village in southern Darfur, killing more than 100 men, women, and children, in January, according to Human Rights Watch. The world has witnessed this in Darfur. We know it has happened. We must do something about it. That is why I join my colleague in this request that we take action now, move this Darfur Accountability Act, join Senator CORZINE, join Senator BROWNBACK, and make this happen.

Let me also say this. My closest friend in politics was Paul Simon, who preceded me in the Senate. He spoke out on the Rwandan genocide when very few did. He called on the Clinton administration to do something, and they did not. They look back now with sorrow and some shame that they did not. President Clinton has said that. We do not want to be in that same situation.

The United States should not be a guilty bystander in this genocide. We will be guilty if we do not act. We will be bystanders if we come up with excuses to do nothing. We need to take the risk to save these people, as Paul Rusesabagina did in Rwanda. We can step in today and save and protect innocent lives, call on the United Nations to act, and if they fail to act, take the next step, even if it involves commitments from the United States which may not be immediately popular.

I think the American people will understand. We are a compassionate, caring people who will not stand idly by in the face of a genocide as we did during Rwanda.

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

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

S. 495

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Darfur Accountability Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) GOVERNMENT OF SUDAN.—The term ''Government of Sudan'' means the National Congress Party-led government in Khartoum, Sudan, or any successor government formed on or after the date of the enactment of this Act.

(3) MEMBER STATES.—The term ''member states'' means the member states of the United Nations.

(4) SUDAN NORTH-SOUTH PEACE AGREEMENT.—The term ''Sudan North-South Peace Agreement'' means the comprehensive peace agreement signed by the Government of Sudan and the Sudan People's Liberation Army/Movement on January 9, 2005.

(5) THOSE NAMED BY THE UN COMMISSION.—The term ''those named by the UN Commission'' means those individuals whose names appear in the sealed file delivered to the Secretary General of the United Nations by the International Commission of Inquiry on Darfur to the United Nations Secretary General.

(6) UN COMMISSION.—The term ''UN Commission'' means the International Commission of Inquiry on Darfur to the United Nations Secretary General.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) On July 22, 2004, the House of Representatives and the Senate declared that the atrocities occurring in Darfur, Sudan are genocide.

(2) On September 9, 2004, Secretary of State Colin L. Powell stated before the Committee on Foreign Relations of the Senate, ''[w]hen we reviewed the evidence compiled by our team, along with other information available to the State Department, we concluded that genocide has been committed in Darfur and that the Government of Sudan and the [Janjaweed] bear responsibility—and genocide may still be occurring''.

(3) President George W. Bush, in an address before the United Nations General Assembly on September 21, 2004, stated, ''[a]t this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide''.

(4) On July 30, 2004, the United Nations Security Council passed Security Council Resolution 1556, calling upon the Government of Sudan to disarm the Janjaweed militias and to apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out violations of human rights and international humanitarian law and carried out other atrocities in the Darfur region.

(5) On September 18, 2004, the United Nations Security Council passed Security Council Resolution 1564, determining that the Government of Sudan had failed to meet its obligations under Security Council Resolution 1556, calling for a military flight ban in and over the Darfur region, demanding the names of Janjaweed militiamen disarmed and arrested for verification, establishing an International Commission of Inquiry into violations of international humanitarian and human rights laws, and threatening sanctions should the Government of Sudan fail to fully comply with Security Council Resolutions 1556 and 1564.

(6) United Nations Security Council Resolution 1564 declares that if the Government of Sudan ''fails to comply fully'' with Security Council Resolutions 1556 and 1564, the Security Council shall consider taking ''additional measures'' against the Government of Sudan ''as contemplated in Article 41 of the Charter of the United Nations, such as actions to affect Sudan's petroleum sector or individual members of the Government of Sudan, in order to take effective action to obtain such full compliance and cooperation''.

(7) United Nations Security Council Resolution 1564 also ''welcomes and supports the intention of the African Union to enhance and augment its monitoring mission in Darfur'' and ''urges member states to support the African Union in these efforts, including by providing all equipment, logistical, financial, material, and other resources necessary to support the rapid expansion of the African Union Mission''.

(8) On February 1, 2005, the United Nations released the Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, dated January 25, 2005, which stated that, ''[g]overnment forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement throughout Darfur'', that such ''acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity'', and that the ''magnitude and large-scale nature of some crimes against humanity as well as their consistency over a long period of time, necessarily imply that these crimes result from a central planning operation''.

(9) The Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General notes that, pursuant to its mandate and in the course of its work, the UN Commission collected information relating to individual perpetrators of acts constituting ''violations of international human rights law and international humanitarian law, including crimes against humanity and war crimes'' and that the UN Commission has delivered to the Secretary-General of the United Nations a sealed file of those named by the UN Commission with the recommendation that the ''file be handed over to a competent Prosecutor''.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the atrocities unfolding in Darfur, Sudan, have been and continue to be genocide;

(2) the United States should immediately seek passage at the United Nations Security Council of a resolution that—

(A) requires member states to freeze the property and assets of, deny visas to, and deny entry to—

(i) those named by the UN Commission;

(ii) family members of those named by the UN Commission; and

(iii) any associates of those named by the UN Commission to whom assets or property of those named by the UN Commission were transferred on or after June 11, 2004;

(B) urges member states to submit to the Security Council the name of any individual that the government of any such member state believes is or has been planning, carrying out, responsible for, or otherwise involved in genocide, war crimes, or crimes against humanity in Darfur, along with evidence supporting such belief so that the Security Council may consider imposing sanctions described in subparagraph (A) against those individuals described in such subparagraph;

(C) imposes sanctions or additional measures against the Government of Sudan, including sanctions that will affect the petroleum sector in Sudan, individual members of the Government of Sudan, and entities controlled or owned by officials of the government of Sudan or the National Congress Party in Sudan, that will remain in effect until such time as—

(i) humanitarian organizations are granted full, unimpeded access to Darfur;

(ii) the Government of Sudan cooperates with humanitarian relief efforts, carries out activities to demobilize and disarm Janjaweed militias and any other militias supported or created by the Government of Sudan, and cooperates fully with efforts to bring to justice the individuals responsible for genocide, war crimes, or crimes against humanity in Darfur;

(iii) the Government of Sudan cooperates fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan;

(iv) the Government of Sudan permits the safe and voluntary return of displaced persons and refugees to their homes and rebuilds the communities destroyed in the violence in Darfur; and

(v) the Sudan North-South Peace Agreement is fully implemented and a new coalition government is created under such Agreement;

(D) establishes a military no-fly zone in Darfur;

(E) supports the expansion of the African Union force in Darfur so that such force achieves the size and strength needed to prevent ongoing fighting and violence in Darfur;

(F) urges member states to accelerate assistance to the African Union force in Darfur;

(G) calls on the Government of Sudan to cooperate with, and allow unrestricted movement in Darfur by, the African Union force in the region, international humanitarian organizations, and United Nations monitors;

(H) extends the embargo of military equipment established by paragraphs 7 through 9 of Security Council Resolution 1556 to include the prohibition of sale or supply to the Government of Sudan; and

(I) supports African Union efforts to negotiate peace talks between the Government of Sudan and rebels in Darfur, calls on the Government of Sudan and rebels in Darfur to abide by their obligations under the N'Djamena Ceasefire Agreement of April 8, 2004 and subsequent agreements, and urges parties to engage in peace talks without preconditions and seek to resolve the conflict;

(3) the United States should work with other nations to ensure effective efforts to freeze the property and assets of and deny visas and entry to—

(A) those named by the UN Commission;

(B) any individuals the United States believes is or has been planning, carrying out, responsible for, or otherwise involved in genocide, war crimes, and crimes against humanity in Darfur;

(C) family members of any person described in subparagraphs (A) or (B); and

(D) any associates of any such person to whom assets or property of such person were transferred on or after June 11, 2004;

(4) the United States should support accountability through action by the United Nations Security Council, pursuant to Chapter VII of the Charter of the United Nations, to ensure the prompt prosecution and adjudication in a competent international court of justice of those named by the UN Commission;

(5) the United States should not provide assistance to the Government of Sudan, other than assistance necessary for the implementation of the Sudan North-South Peace

Agreement, the support of the southern regional government in Sudan, or for humanitarian purposes in Sudan, unless the President certifies and reports to Congress that—

(A) humanitarian organizations are being granted full, unimpeded access to Darfur and the Government of Sudan is providing full cooperation with humanitarian efforts;

(B) concrete, sustained steps are being taken toward demobilizing and disarming Janjaweed militias and any other militias supported or created by the Government of Sudan;

(C) the Government of Sudan is cooperating fully with efforts to bring to justice those responsible for genocide, war crimes, or crimes against humanity in Darfur;

(D) the Government of Sudan cooperates fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan;

(E) the Government of Sudan permits the safe and voluntary return of displaced persons and refugees to their homes and rebuilds the communities destroyed in the violence in Darfur; and

(F) the Sudan North-South Peace Agreement is fully implemented and a new coalition government is created under such Agreement;

(6) the President should work with the African Union and other international organizations and nations to establish mechanisms for the enforcement of a no-fly zone in Darfur;

(7) the African Union should extend its mandate in Darfur to include the protection of civilians and proactive efforts to prevent violence, and member states should support fully this extension;

(8) the President should accelerate assistance to the African Union force in Darfur and discussions with the African Union and the European Union and other supporters of the African Union force on the needs of such force, including assistance for housing, transportation, communications, equipment, technical assistance such as training and command and control assistance, and intelligence;

(9) the President should appoint a Presidential Envoy for Sudan—

(A) to support the implementation of the Sudan North-South Peace Agreement;

(B) to seek ways to bring stability and peace to Darfur;

(C) to address instability elsewhere in Sudan; and

(D) to seek a comprehensive peace throughout Sudan;

(10) United States officials, including the President, the Secretary of State, and the Secretary of Defense, should raise the issue of Darfur in bilateral meetings with officials from other members of the United Nations Security Council and relevant countries, with the aim of passing a United Nations Security Council resolution described in paragraph (2) and mobilizing maximum support for political, financial, and military efforts to stop the genocide in Darfur;

(11) the Secretary of State should immediately engage in a concerted, sustained campaign with other members of the United Nations Security Council and relevant countries with the aim of achieving the goals described in paragraph (10);

(12) the United States fully supports the Sudan North-South Peace Agreement and urges the rapid implementation of its terms; and

(13) the United States condemns attacks on humanitarian workers and calls on all forces in Darfur, including forces of the Government of Sudan, all militia, and forces of the Sudan People's Liberation Army/Movement and the Justice and Equality Movement, to refrain from such attacks.

SEC. 5. IMPOSITION OF SANCTIONS.

(a) FREEZING ASSETS.—At such time as the United States has access to the names of those named by the UN Commission, the President shall take such action as may be necessary to immediately freeze the funds and other assets belonging to anyone so named, their family members, and any associates of those so named to whom assets or property of those so named were transferred on or after June 11, 2004, including requiring that any United States financial institution holding such funds and assets promptly report those funds and assets to the Office of Foreign Assets Control.

(b) VISA BAN.—Beginning at such times as the United States has access to the names of those named by the UN Commission, the President shall deny visas and entry to—

(1) those named by the UN Commission;

(2) the family members of those named by the UN Commission; and

(3) anyone the President determines has been, is, or may be planning, carrying out, responsible for, or otherwise involved in crimes against humanity, war crimes, or genocide in Darfur, Sudan.

(c) ASSET REPORTING REQUIREMENT.—Not later than 14 days after a decision to freeze the property or assets of, or deny a visa or entry to, any person under this section, the President shall report the name of such person to the appropriate congressional committees.

(d) NOTIFICATION OF WAIVERS OF SANCTIONS.—Not later than 30 days before waiving the provisions of any sanctions currently in force with regard to Sudan, the President shall submit to the appropriate congressional committees a report describing the waiver and the reasons therefor.

SEC. 6. REPORTS TO CONGRESS.

(a) REPORTS ON STABILIZATION IN SUDAN.—

(1) INITIAL REPORT.—Not later than 30 days after the date of enactment of this Act, the Secretary of State, in conjunction with the Secretary of Defense, shall report to the appropriate congressional committees on efforts to deploy an African Union force in Darfur, the capacity of such force to stabilize Darfur and protect civilians, the needs of such force to succeed at such mission including housing, transportation, communications, equipment, technical assistance, including training and command and control, and intelligence, current status of United States and other assistance to the African Union force, and additional United States assistance needed.

(2) SUBSEQUENT REPORTS.—The Secretary of State, in conjunction with the Secretary of Defense, shall submit not less than every 60 days until such time as the President certifies that the situation in Darfur is stable and that civilians are no longer in danger and that the African Union is no longer needed to prevent a resumption of violence and attacks against civilians.

(b) REPORT ON THOSE NAMED BY THE UN COMMISSION.—At such time as the United States has access to the names of those named by the UN Commission, the President shall submit to the appropriate congressional committees a report listing such names.

(c) REPORTS ON ACCOUNTABILITY.—

(1) IN GENERAL.—No later than 30 days after the date of enactment of this Act and every 30 days thereafter, the President shall submit to the appropriate congressional committees a report on the status of efforts in the United Nations Security Council to ensure prompt prosecution and adjudication of those named by the UN Commission in a competent international court of justice.

(2) CONTENT.—The reports required under paragraph (1) shall describe—

(A) the status of any relevant resolution introduced in the United Nations Security Council;

(B) the policy of the United States with regard to such resolutions;

(C) the status of all possible venues for prosecution and adjudication of those named by the UN Commission, including whether such venues have the jurisdiction, personnel and assets necessary to promptly prosecute and adjudicate cases involving such persons; and

(D) any ongoing or planned United States or other assistance related to the prosecution and adjudication of cases involving those named by the UN Commission.

Mr. BROWNBACK. Mr. President, today with several bipartisan colleagues, Senator CORZINE and I introduced the Darfur Accountability Act of 2005. For nearly a year, this body has been aware of the ongoing genocide in Sudan. Last July we declared genocide in Darfur, followed shortly thereafter by the same declaration by former Secretary of State Colin Powell. Yet no punitive measure has been taken by the international community against the Government of Sudan for these egregious human rights violations. Some sources estimate that as many as 400,000 people have died as a result, and nearly 2 million have been displaced from their homes.

Yesterday I spoke on the Senate floor in an attempt to display the face of genocide. Photographs of scorched bodies, castrated men, dead children, and burned villages were provided to me by Nicholas Kristof of the New York Times. These photos do nothing less than display the cruel impunity of those committing genocide. The haunting reality is that the international community has failed on their promise of ''never again.''

The United Nations should take immediate steps to end this genocide and Kofi Annan should lead the Security Council to pass a strong, meaningful resolution that will immediately change the situation on the ground. There is no longer an excuse; we must call this what this is, and we must immediately act to prevent further pillaging and death. I have called on Annan several times to lead or leave. He should pass a resolution with mechanisms to see that the impunity ends and if he fails to do so, resign in moral protest at the international community's inaction and complacency.

Our bill, the Darfur Accountability Act of 2005, calls for several key measures to be taken, including: a multilateral arms embargo to include the government of Sudan; a no fly zone; multilateral sanctions; targeted sanctions including travel bans and the freezing of assets of criminals; accelerated assistance to AU monitoring troops, and several other items that will secure a peaceful Darfur.

I encourage my colleagues to join us in moving this bill through Congress. We do not have days or weeks to spare when millions of lives are in jeopardy. We cannot grant the government of

Sudan and the janjaweed more time to execute the African tribes in Darfur. I look forward to working with Senator CORZINE and other colleagues to see passage of this bill immediately.

By Mr. SALAZAR:

S. 496. A bill to provide permanent funding for the payment in lieu of taxes program, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SALAZAR:

S. 497. A bill to revitalize our nation's rural communities by expanding broadband services; to the Committee on Finance.

Mr. SALAZAR. Mr. President, I rise to speak about two bills I am introducing today and to speak out in support of rural Colorado and rural America. The two bills—one to increase investment in broadband technology in rural areas, and another to permanently fund the payment in lieu of taxes program—are the first bills I am introducing as a Senator. I am proud they are both targeted at rural Colorado.

Over 400 years ago, in 1598, my family helped found the oldest city in what is now these United States. They named the city Santa Fe—the City of Holy Faith—because they knew the hand of God would guide them through the struggles of survival in the ages ahead.

For the next four centuries, that faith in their future guided them to overcome extremely painful and challenging times. As humble and poor farmers, the circumstances of their lives forged the priceless and tireless values of my father Henry and mother Emma. And they instilled those values in their children.

My family has now farmed the same lands in southern Colorado, 110 miles north of Santa Fe, for almost 150 years. On that ranch, we did not have a telephone, and the power lines did not reach us until 1981. Although we were poor in material goods, we were rich in spirit. My parents were part of the World's ''greatest generation''—my father a proud veteran of World War II and my mother a proud servant in the War Department. Although neither had a college degree, they taught us about the values and the promise of America. All eight of their children became first-generation college graduates, inspired by their dedication to God, family, community, and country.

As Colorado's U.S. Senator, I am proud of my values and roots in rural Colorado. Rural America is the heart of our great Nation.

The values my parents taught me are the fundamental values that make this country the place I am privileged to call home.

Unfortunately, the America where I grew up is vanishing, left behind by a Washington DC that has lost touch with what is important to the people of the heartland. I fear that rural Colorado, like the rest of rural America, has become ''the forgotten America.''

Rural America has given up its sons and daughters to the cause of freedom without hesitation and in numbers that far exceed its proportion of the country's population. It has worked quietly to put food on our tables, and remains humbly grounded, seeking neither praise nor thanks.

Yet when the President reported on the State of the Union, there was not a word on the state of the more than 3,000 counties that make up rural America—not a word. And in the administration's budget, the programs and investments vital to those communities—PILT, block grants, conservation programs, investments in animal and food safety, and investments in technology, schools and law enforcement—were drastically cut.

Last week, I traveled nearly 2,000 miles to every corner of Colorado and convened 17 meetings with elected officials representing Colorado's 64 counties.

In those meetings, I heard the state of rural America in the words of the people who are fighting for their families everyday.

The state of rural America is sadly the state of the forgotten America.

In rural Colorado, residents face lower incomes and are far more likely to be unemployed than people in urban and suburban areas.

In Crowley County, east of Pueblo, there is only one nurse practitioner to serve a county of nearly 6,000 people. If you get sick in Crowley County, you have three choices: wait, go to the emergency room, or hope you get better.

In Routt County, veterans have to travel nearly 200 miles to Grand Junction to see a doctor in the VA clinic. A few months ago, there was no waiting list to see a doctor. Now, there's a waiting list of 400, which means veterans in western Colorado wait 5 months to see a doctor.

The Dolores County Sheriff, Jerry Martin, has to make hiring decisions based not on public security demands but on the ability of his department to provide health care to the prospective employee. Health care premiums have risen 20 percent every year the last 3 years in Dolores County.

Across the State, people told me that their health care premiums dwarf their mortgage payments because in many cases they pay over $1,000 per month for health insurance for their families.

Between 1996 and 2000, one in three of our rural schools saw its enrollment drop more than 10 percent.

Though they continue to excel on State tests, too many of our rural schools have been forced to divert valuable resources to fulfill the unfunded mandates of No Child Left Behind.

In Kiowa, Moffat, and Custer Counties, our teachers are paid much less than teachers in the big cities. In Kit Carson County, where teachers sometimes teach two and three subjects, only half of our teachers right now would meet new Federal standards requiring them to be certified for each subject.

And in the town of Rico, half of Main Street is boarded up: there's a liquor store, but not much else. According to the Kansas City Federal Reserve Bank, that may be part of a larger trend: Main Street in rural Colorado is losing its storefronts at an alarming rate.

Compare those needs to the budget the Administration recently proposed.

While we are facing a shortage of qualified and trained health care employees, the administration budget this year cut health professions training by almost two thirds, $290 million.

While our State tries to deal with a devastating budget crisis, the Administration dramatically reduced funding for the Community Development Block Grants on which towns, from Greeley to Grand Junction to Denver, depend.

For the fifth year in a row, the Administration's budget fails to fulfill the funding promises made in the No Child Left Behind law, but still heaps mandates on local schools.

Moreover, the proposed budget eliminates low-interest loans for students who have the grades but can't afford to go to college and eliminates funding for vocational training that many rural Colorado students use.

The proposed budget cuts $250 million from one of the most successful small business investment programs and decimates USDA investments in rural economic development.

While we combat methamphetamine production and invest precious resources in meth lab clean up, the budget cuts Safe and Drug Free School grants, the COPS program by nearly $500 million, and State and local homeland security training programs by 60 percent.

I want to propose two small steps in my effort to reinvest in rural America. In coming months I intend to introduce measures to strengthen rural law enforcement, revitalize rural health care, invest in Main Street, strengthen rural education, help ensure efficient and equitable sharing of water resources and underscore the values that shape every rural community in Colorado.

The first bill is on the PILT program. I know that education in rural America is funded through a variety of means, including through resources passed to rural counties through the Payment in Lieu of Taxes program.

The idea behind the PILT program is simple. It makes sure that local communities in States like Colorado—States that have seen large parts of land set aside by the Federal Government for public use—do not lose valuable resources from foregone property taxes. Those resources fund programs from education to law enforcement.

Unfortunately, this year the administration's budget is again proposing to cut that funding. Thanks to the efforts of my Democratic and Republican colleagues, such as Senator BINGAMAN, some of that funding has been won back over the last several years, and I

am hopeful we will do so again this year.

But our local communities should not have to wait and wonder every year whether their resources for schools, roads and law enforcement will make it into the budget, and that is why I am introducing a bill to make permanent the funding for the payment in lieu of taxes program.

I am also introducing a bill to increase investment in broadband technology in rural communities. Bringing broadband to our rural schools will give our students there access to technology that millions of other students take for granted. With broadband will come world class research and access to AP courses at Colorado's universities. And with broadband we will see the economic development for which rural Colorado has been waiting.

The benefits of this investment do not stop in education and business. Telehealth is increasingly vital in rural Colorado, held back in some cases by the lack of investment in infrastructure. That same infrastructure limits investment opportunities in rural communities.

With this bill I am building on the hard work of others and saying that it is long past time for us to invest in the world class broadband that rural communities need and are right to expect. My bill does that in three ways.

First, it will establish our Nation's first Rural Broadband Office to coordinate all Federal Government resources as they relate to broadband.

Second, it will help broadband providers keep pace with our rapidly changing technology.

And third, it calls on the Congress to live up to its responsibility to fully fund rural utilities.

It has been a long road that has carried me from that ranch in the San Luis Valley, growing up as one of eight siblings and proudly attending college and law school before having the privilege to serve in U.S. Senate.

In all of this, I have never forgotten where I come from. In my office, I have a sign on my desk that reads ''No Farms, No Food.'' Every day I look at it, and I am reminded of just how dependent we are on the people of rural Colorado, and in rural communities all across America.

At a meeting with leaders from Colorado's farmer and rancher community last month, a wheat farmer from southeastern Colorado told me this: ''Senator, you'd never believe how many farmers refuse to go to the doctor when they get sick. It's not that they aren't really sick. It's that they can't afford the doctor.''

Unfortunately, Mr. President, I do believe that wheat farmer, and I know rural America needs our help.

In America, the most powerful, prosperous, idealistic country the world has ever known, we can do better.

And protecting that way of life—in our churches and town halls, Main Streets and living rooms, ranches and independent drug stores—demands it. Together, we can make sure that no one anywhere in this country feels that he is part of a ''Forgotten America'' any longer.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I congratulate my colleague from Colorado. His maiden speech was as brilliant as his life has been. It is an honor to serve with him, when I think about the story of his family and its presence and contribution to this country and the power with which he speaks for those he represents in rural America. This will be one of many speeches that make a great impact on our country. I am honored to serve with him and congratulate him on his initial voyage.

Mr. SALAZAR. Mr. President, I appreciate the comments from the Senator from New Jersey.

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

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

S. 496

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''PILT and Refuge Revenue Sharing Permanent Funding Act''.

SEC. 2. PERMANENT FUNDING.

(a) PAYMENTS IN LIEU OF TAXES.—

(1) IN GENERAL.—Section 6906 of title 31, United States Code, is amended to read as follows:

''§ 6906. Funding

''For fiscal year 2006 and each fiscal year thereafter, amounts authorized under this chapter shall be made available to the Secretary of the Interior, out of any amounts in the Treasury not otherwise appropriated and without further appropriation, for obligation or expenditure in accordance with this chapter.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 69 of title 31, United States Code, is amended by striking the item relating to section 6906 and inserting the following:

''6906. Funding.''.

(b) REFUGE REVENUE SHARING.—Section 401(d) of the Act of June 15, 1935 (16 U.S.C. 715s(d)) is amended—

(1) by striking ''If the net receipts'' and inserting the following:

''(1) If the net receipts''; and

(2) by adding at the end the following:

''(2) For fiscal year 2006 and each fiscal year thereafter, the amount made available under paragraph (1) shall be made available to the Secretary, out of any funds in the Treasury not otherwise appropriated and without further appropriation, for obligation or expenditure in accordance with this section.''.

S. 497

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Broadband Rural Revitalization Act of 2005''.

SEC. 2. RURAL BROADBAND OFFICE.

(a) ESTABLISHMENT.—There is established within the Department of Commerce, the Rural Broadband Office.

(b) DUTIES.—The Office shall coordinate all Federal Government resources as they relate to the expansion of broadband technology into rural areas.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Rural Broadband Office shall submit a report to the Congress that—

(1) assesses the availability of, and access to, broadband technology in rural areas;

(2) estimates the number of individuals using broadband technology in rural areas;

(3) estimates the unmet demand for broadband technology in rural areas; and

(4) sets forth a strategic plan to meet the demand described in paragraph (3).

SEC. 3. FULL FUNDING FOR RURAL BROADBAND SERVICES.

It is the sense of Congress that the loan program established in section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), which is essential to the economic well-being of small telecommunications providers and to the quality of life for all rural residents, be funded fully.

SEC. 4. EXPENSING OF BROADBAND INTERNET ACCESS EXPENDITURES FOR RURAL COMMUNITIES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 190 the following new section:

''SEC. 191. BROADBAND EXPENDITURES FOR RURAL COMMUNITIES.

''(a) TREATMENT OF EXPENDITURES.—

''(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

''(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulation.

''(b) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified broadband expenditure' means, with respect to any taxable year, any direct or indirect costs incurred and properly taken into account with respect to—

''(A) the purchase or installation of qualified equipment (including any upgrades thereto), and

''(B) the connection of such qualified equipment to any qualified subscriber.

''(2) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any costs incurred with respect to the launching of any satellite equipment.

''(3) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service, after the date of the enactment of this Act.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after the date of the enactment of this Act by any person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i), which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means any person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of any digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier,

''(F) any other wireless carrier, providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment; or

''(G) any carrier or operator using any other technology.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

''(A) such a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by 1 or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, or

''(ii) any residential subscriber residing in a dwelling located in a rural area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) any nonresidential subscriber maintaining a permanent place of business in a rural area, or

''(ii) any residential subscriber.

''(15) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means any individual who purchases broadband services which are delivered to such individual's dwelling.

''(16) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 5 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(17) RURAL SUBSCRIBER.—The term 'rural subscriber' means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a

permanent place of business located in a rural area.

''(18) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(19) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

''(20) SUBSCRIBER.—The term 'subscriber' means any person who purchases current generation broadband services or next generation broadband services.

''(21) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(f) SPECIAL RULES.—

''(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property referred to in section 50(b) or with respect to the portion of the cost of any property specified in an election under section 179.

''(2) BASIS REDUCTION.—

''(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

''(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

''(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).''.

(b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 512(b) (relating to modifications) is amended by adding at the end the following new paragraph:

''(18) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—A mutual or cooperative telephone company which for the taxable year satisfies the requirements of section 501(c)(12)(A) may elect to reduce its unrelated business taxable income for such year, if any, by an amount that does not exceed the qualified broadband expenditures which would be taken into account under section 191 for such year by such company if such company was not exempt from taxation. Any amount which is allowed as a deduction under this paragraph shall not be allowed as a deduction under section 191 and the basis of any property to which this paragraph applies shall be reduced under section 1016(a)(32).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) of the Internal Revenue Code of 1986 (relating to capital expenditures) is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by adding at the end the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 191.''.

(2) Section 1016(a) of such Code is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 191(f)(2).''.

(3) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

''Sec. 191. Broadband expenditures for rural communities.''.

(d) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16) and (22) of section 191(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(19) of such section 191—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 191 of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 191 of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(f) NO IMPLICATION REGARDING THE NEED FOR NEXT GENERATION INCENTIVE IN URBAN AREAS.—Nothing in this section shall be construed to imply that an incentive for next generation broadband is not needed in urban areas.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after the date of the enactment of this Act and before the date which is 12 months after the date of the enactment of this Act.

By Mr. BURR (for himself, Ms. LANDRIEU, and Mr. LOTT):

S. 498. A bill to provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation and for other purposes; to the Committee on Energy and Natural Resources.

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

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

S. 498

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Interstate Transmission Act of 2005''.

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

SEC. 2. FINDINGS.

Congress finds that—

(1) transmission networks are the backbone of reliable delivery of electric energy and competitive wholesale power markets;

(2) the expansion, enhancement, and improvement of transmission facilities, and rules of the road for using the facilities, are necessary to maintain and improve the reliability of electric service and to enhance competitive wholesale markets across the United States and competitive retail markets that have been adopted by nearly the States;

(3) to ensure reliable and efficient expansion, enhancement, and improvement of transmission facilities, the economics of the business of electric transmission and the Federal regulatory structures applicable to the facilities must be improved;

(4) Federal electricity regulatory policy should benefit consumers by providing incentives for infrastructure improvement and by removing barriers to efficient competition, and not be dictated by the imposition of market structures or costly mandates;

(5) slow, burdensome, or duplicative reviews of utility mergers are a disincentive to the efficient disposition of utility assets needed to ensure a reliable and efficient infrastructure;

(6) since efficient competition requires accurate price signals that reflect cost causation, parties that benefit from transmission upgrades should be required to pay for the upgrades;

(7) Federal regulation should not override the interests of local consumers or State laws that ensure reliable service and adequate transmission capacity to serve consumers;

(8) in regions where the formation of regional transmission organizations or similar entities have been formed voluntarily with oversight or approval by States, the Federal Energy Regulatory Commission should have clear authority to approve applications for the organizations that are consistent with the Federal Power Act (16 U.S.C. 791a et seq.);

(9) the States and electricity consumers in each region of the United States, and not the Federal Government, are in the best position to determine how the electric power systems serving their regions should be structured, including whether Regional Transmission Organization formation, traditional vertical integration, or other structures are cost effective for their region; and

(10) mandatory reliability rules, developed and enforced by a self-regulating electric reliability organization, are a vital component of a comprehensive policy to ensure a robust and reliable electricity grid.

TITLE I—RELIABLE AND ECONOMIC TRANSMISSION INFRASTRUCTURE

SEC. 101. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 215. TRANSMISSION INFRASTRUCTURE INVESTMENT.

''(a) RULEMAKING REQUIREMENT.—Within 1 year after the enactment of this section, the Commission shall establish, by rule, incentive-based (including, but not limited to performance-based) rate treatments for the transmission of electric energy in interstate commerce by any public utility for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Such rule shall—

''(1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance and operation of facilities for the transmission of electric energy in interstate commerce;

''(2) provide a return on equity, determined using a variety of reasonable valuation methodologies, that attracts new investment in transmission facilities (including related transmission technologies);

''(3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of such facilities;

''(4) allow recovery of all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 216 of this Act;

''(5) allow a current return in rates for construction work in progress for transmission facilities and full recovery of prudently incurred costs for constructing transmission facilities;

''(6) allow the use of formula transmission rates;

''(7) allow rates of return that do not vary with capital structure; and

''(8) allow a maximum 15-year accelerated depreciation on new transmission facilities for rate treatment purposes.

''(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPATION.—In the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Regional Transmission Organization or Independent System Operator. Incentives provided by the Commission pursuant to such rule shall include—

''(1) recovery of all prudently incurred costs to develop and participate in any proposed or approved RTO, ISO, or independent transmission company;

''(2) recovery of all costs previously approved by a State commission which exercised jurisdiction over the transmission facilities prior to the utility's participation in the RTO or ISO, including costs necessary to honor preexisting transmission service contracts, in a manner which does not reduce the revenues the utility receives for transmission services for a reasonable transition period after the utility joins the RTO or ISO; and

''(3) recovery as an expense in rates of the costs prudently incurred to conduct transmission planning and reliability activities, including the costs of participating in RTO, ISO and other regional planning activities and design, study and other precertification costs involved in seeking permits and approvals for proposed transmission facilities.

The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the RTO or ISO that provides transmission service to such utility.

''(c) JUST AND REASONABLE RATES.—All rates approved under the rules adopted pursuant to this section, including any revisions to such rules, are subject to the requirement of sections 205 and 206 that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.''.

SEC. 102. OPEN NONDISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following new section:

''SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES.

''(a) TRANSMISSION SERVICES.—Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

''(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

''(b) EXEMPTION.—The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

''(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) LOCAL DISTRIBUTION FACILITIES.—The requirements of subsection (a) shall not apply to facilities used in local distribution.

''(d) EXEMPTION TERMINATION.—Whenever the Commission, after an evidentiary hearing held upon a complaint and after giving consideration to reliability standards established under section 216, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (b) unreasonably impairs the continued reliability of an interconnected transmission system, it shall revoke the exemption granted to that transmitting utility.

''(e) APPLICATION TO UNREGULATED TRANSMITTING UTILITIES.—The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(f) REMAND.—In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(g) OTHER REQUESTS.—The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

''(h) LIMITATION.—The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(i) TRANSFER OF CONTROL OF TRANSMITTING FACILITIES.—Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved independent transmission organization designated to provide nondiscriminatory transmission access.

''(j) DEFINITION.—For purposes of this section, the term 'unregulated transmitting utility' means an entity that—

''(1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and

''(2) is an entity described in section 201(f).''.

SEC. 103. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) of the Internal Revenue Code of

1986 (relating to classification of certain property) is amended by striking ''and'' at the end of clause (v), by striking the period at the end of clause (vi) and by inserting '', and'', and by adding at the end the following new clause:

''(vii) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale the original use of which commences with the taxpayer after the date of the enactment of this clause.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) of the Internal Revenue Code of 1986 (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (E)(vi) the following:

''(E)(vii) ..... 30''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 104. DISPOSITION OF PROPERTY.

Section 203 of the Federal Power Act (16 U.S.C. 824b) is repealed.

SEC. 105. ELECTRIC RELIABILITY STANDARDS.

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C 824 et seq.) (as amended by section 101) is amended by adding at the end the following:

''SEC. 216. ELECTRIC RELIABILITY.

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

''(1) The term 'bulk-power system' means—

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of 1 or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

''(6) The term 'transmission organization' means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify 1 such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

''(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

''(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

''(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by—

''(i) an independent board;

''(ii) a balanced stakeholder board; or

''(iii) a combination independent and balanced stakeholder board.

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

''(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

''(g) RELIABILITY REPORTS.—The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

''(i) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

''(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least ⅔ of the States within a region that have more than ½ of their electric load served within the region. A regional advisory body shall be composed of 1 member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

(b) STATUS OF ERO.—The Electric Reliability Organization certified by the Federal Energy Regulatory Commission under section 216(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 216(e)(4) of that Act are not departments, agencies, or instrumentalities of the United States Government.

TITLE II—PROTECTING RETAIL CONSUMERS

SEC. 201. NATIVE LOAD SERVICE OBLIGATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by section 105(a)) is amended by adding at the end the following:

''SEC. 217. NATIVE LOAD SERVICE OBLIGATION.

''(a) MEETING SERVICE OBLIGATIONS.—(1) Any load-serving entity that, as of the date of enactment of this section—

''(A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under 1 or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

''(B) by reason of ownership of transmission facilities, or 1 or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation, is entitled to use such firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations.

''(b) ALLOCATION OF TRANSMISSION RIGHTS.—Nothing in this section shall affect any methodology approved by the Commission prior to September 15, 2003, for the allocation of transmission rights by an RTO or ISO that has been authorized by the Commission to allocate transmission rights.

''(c) CERTAIN TRANSMISSION RIGHTS.—The Commission may exercise authority under this Act to make transmission rights not used to meet an obligation covered by subsection (a) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

''(d) OBLIGATION TO BUILD.—Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

''(e) CONTRACTS.—Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

''(f) WATER PUMPING FACILITIES.—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to such facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

''(g) ERCOT.—This section shall not apply within the area referred to in section 212(k)(2)(A).

''(h) JURISDICTION.—This section does not authorize the Commission to take any action not otherwise within its jurisdiction.

''(i) EFFECT OF EXERCISING RIGHTS.—An entity that lawfully exercises rights granted under subsection (a) shall not be considered by such action as engaging in undue discrimination or preference under this Act.

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

''(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through 1 or more additional State utilities or electric cooperatives, provides electric service to end-users.

''(2) The term 'load-serving entity' means a distribution utility or an electric utility that has a service obligation.

''(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

''(4) The term 'State utility' means a State or any political subdivision of a State, or

any agency, authority, or instrumentality of any 1 or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any 1 or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.''.

SEC. 202. VOLUNTARY TRANSMISSION PRICING PLANS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by section 201) is amended by adding at the end the following:

''SEC. 218. VOLUNTARY TRANSMISSION PRICING PLANS.

''(a) IN GENERAL.—Any transmission provider, including an RTO or ISO, may submit to the Commission a plan or plans under section 205 containing the criteria for determining the person or persons that will be required to pay for any construction of new transmission facilities or expansion, modification or upgrade of transmission facilities (in this section referred to as 'transmission service related expansion') or new generator interconnection.

''(b) VOLUNTARY TRANSMISSION PRICING PLANS.—(1) Any plan or plans submitted under subsection (a) shall specify the method or methods by which costs may be allocated or assigned. Such methods may include, but are not limited to:

''(A) directly assigned;

''(B) participant funded; or

''(C) rolled into regional or sub-regional rates.

''(2) FERC shall approve a plan or plans submitted under subparagraph (B) of paragraph (1) if such plan or plans—

''(A) result in rates that are just and reasonable and not unduly discriminatory or preferential consistent with section 205; and

''(B) ensure that the costs of any transmission service related expansion or new generator interconnection not required to meet applicable reliability standards established under section 216 are assigned in a fair manner, meaning that those who benefit from the transmission service related expansion or new generator interconnection pay an appropriate share of the associated costs, provided that—

''(i) costs may not be assigned or allocated to an electric utility if the native load customers of that utility would not have required such transmission service related expansion or new generator interconnection absent the request for transmission service related expansion or new generator interconnection that necessitated the investment;

''(ii) the party requesting such transmission service related expansion or new generator interconnection shall not be required to pay for both—

''(I) the assigned cost of the upgrade; and

''(II) the difference between—

''(aa) the embedded cost paid for transmission services (including the cost of the requested upgrade); and

''(bb) the embedded cost that would have been paid absent the upgrade; and

''(iii) the party or parties who pay for facilities necessary for the transmission service related expansion or new generator interconnection receives full compensation for its costs for the participant funded facilities in the form of—

''(I) monetary credit equal to the cost of the participant funded facilities (accounting for the time value of money at the Gross Domestic Product deflator), which credit shall be pro-rated in equal installments over a period of not more than 30 years and shall not exceed in total the amount of the initial investment, against the transmission charges that the funding entity or its assignee is otherwise assessed by the transmission provider;

''(II) appropriate financial or physical rights; or

''(III) any other method of cost recovery or compensation approved by the Commission.

''(3) A plan submitted under this section shall apply only to—

''(A) a contract or interconnection agreement executed or filed with the Commission after the date of enactment of this section; or

''(B) an interconnection agreement pending rehearing as of November 1, 2003.

''(4) Nothing in this section diminishes or alters the rights of individual members of an RTO or ISO under this Act.

''(5) Nothing in this section shall affect the allocation of costs or the cost methodology employed by an RTO or ISO authorized by the Commission to allocate costs (including costs for transmission service related expansion or new generator interconnection) prior to the date of enactment of this section.

''(6) This section shall not apply within the area referred to in section 212(k)(2)(A).

''(7) The term 'transmission provider' means a public utility that owns or operates facilities that provide interconnection or transmission service in interstate commerce.''.

TITLE III—VOLUNTARY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS

SEC. 301. PROMOTION OF VOLUNTARY DEVELOPMENT OF REGIONAL TRANSMISSION ORGANIZATIONS, INDEPENDENT TRANSMISSION PROVIDERS, AND SIMILAR ORGANIZATIONS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by section 202) is amended by adding at the end thereof the following new section:

''SEC. 219. PROMOTION OF VOLUNTARY DEVELOPMENT OF REGIONAL TRANSMISSION ORGANIZATIONS, INDEPENDENT TRANSMISSION PROVIDERS, AND SIMILAR ORGANIZATIONS.

''(a) IN GENERAL.—The Commission may approve and may encourage the formation of regional transmission organizations, independent transmission providers, and similar organizations (referred to in this section as 'transmission organizations') for the purpose of enhancing the transmission of electric energy in interstate commerce. Among options for the formation of a transmission organization, the Commission shall prefer those in which—

''(1) participation in the organization by transmitting utilities is voluntary;

''(2) the form, structure, and operating entity of the organization are approved of by participating transmitting utilities; and

''(3) market incentives exist to promote investment for expansion of transmission facilities and for the introduction of new transmission technologies within the territory of the organization.

''(b) CONDITIONS.—No order issued under this Act shall be conditioned upon or require a transmitting utility to transfer operational control of jurisdictional facilities to an independent system operator or other transmission organization.

''(c) COMPLAINT.—In addition to any other rights or remedies it may have under this Act, any entity serving electric load that is denied services by a transmission organization that the transmission organization makes available to other load serving entities shall be entitled to file a complaint with the Commission concerning the denial of such services. If the Commission shall find, after an evidentiary hearing on the record, that the denial of services complained of was unjust, unreasonable, unduly discriminatory or preferential, or contrary to the public interest, the Commission may order the provision of such services at rates and on terms and conditions that shall be in accordance with this Act.''.

By Mr. DODD:

S. 499. A bill to amend the Consumer Credit Protection Act to ban abusive credit practices, enhance consumer disclosures, protect underage consumers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. DODD. Mr. President, I rise today to introduce legislation, the Credit CARD Act of 2005 (the Credit Card Accountability Responsibility and Disclosure Act of 2005), designed to protect our Nation's consumers from the predatory practices of the credit card industry.

The Credit CARD Act is substantially the same as legislation I previously introduced in the 108th Congress. As the Senate considers bankruptcy reform legislation, which I believe will adversely impact consumers and inappropriately reward the credit card industry, the Credit CARD Act is needed now more than ever before.

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

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

S. 499

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the ''Credit Card Accountability Responsibility and Disclosure Act of 2005'' or the ''Credit CARD Act of 2005''.

SEC. 2. REGULATORY AUTHORITY.

The Board of Governors of the Federal Reserve System may issue such rules or publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act.

TITLE I—ABUSIVE PRACTICES

Subtitle A—Use of Default Clauses

SEC. 111. PRIOR NOTICE OF RATE INCREASES REQUIRED.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) ADVANCE NOTICE OF INCREASE IN INTEREST RATE REQUIRED.—

''(1) IN GENERAL.—In the case of any credit card account under an open end consumer credit plan, no increase in any annual percentage rate of interest (other than an increase due to the expiration of any introductory percentage rate of interest, or due solely to a change in another rate of interest to which such rate is indexed)—

''(A) may take effect before the beginning of the billing cycle which begins not less than 15 days after the obligor receives notice of such increase; or

''(B) may apply to any outstanding balance of credit under such plan as of the date of the notice of the increase required under paragraph (1).

''(2) NOTICE OF RIGHT TO CANCEL.—The notice referred to in paragraph (1) with respect to an increase in any annual percentage rate of interest shall be made in a clear and conspicuous manner and shall contain a brief statement of the right of the obligor to cancel the account before the effective date of the increase.''.

SEC. 112. FREEZE ON INTEREST RATE TERMS AND FEES ON CANCELED CARDS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as amended by this Act, is amended by adding at the end the following:

''(i) FREEZE ON INTEREST RATE TERMS AND FEES ON CANCELED CARDS.—If an obligor referred to in subsection (h) closes or cancels a credit card account before the beginning of the billing cycle referred to in subsection (h)(1)—

''(1) an annual percentage rate of interest applicable after the cancellation with respect to the outstanding balance on the account as of the date of cancellation may not exceed any annual percentage rate of interest applicable with respect to such balance under the terms and conditions in effect before the date of the notice of any increase referred to in subsection (h)(1); and

''(2) the repayment of the outstanding balance after the cancellation shall be subject to all other terms and conditions applicable with respect to such account before the date of the notice of the increase referred to in subsection (h).''.

SEC. 113. LIMITS ON FINANCE AND INTEREST CHARGES FOR ON-TIME PAYMENTS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as amended by this Act, is amended by adding at the end the following:

''(j) PROHIBITION ON PENALTIES FOR ON-TIME PAYMENTS.—

''(1) PROHIBITION ON FINANCE CHARGES FOR ON-TIME PAYMENTS.—In the case of any credit card account under an open end credit plan, where no other balance is owing on the account, no finance or interest charge may be imposed with regard to any amount of a new extension of credit that was paid on or before the date on which it was due.

''(2) PROHIBITION ON CANCELLATION OR ADDITIONAL FEES FOR ON-TIME PAYMENTS OR PAYMENT IN FULL.—In the case of any credit card account under an open end consumer credit plan, no fee or other penalty may be imposed on the consumer in connection with the payment in full of an existing account balance, or payment of more than the minimum required payment of an existing account balance.''.

SEC. 114. PROHIBITION ON OVER-THE-LIMIT FEES FOR CREDITOR-APPROVED TRANSACTIONS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as amended by this Act, is amended by adding at the end the following:

''(k) LIMITATION ON IMPOSITION OF OVER-THE-LIMIT FEES.—In the case of any credit card account under an open end consumer credit plan, a creditor may not impose any fees on the obligor for any extension of credit in excess of the amount of credit authorized to be extended with respect to such account, if the extension of credit is made in connection with a credit transaction which the creditor approves in advance or at the time of the transaction.''.

TITLE II—ENHANCED CONSUMER DISCLOSURES

SEC. 211. DISCLOSURES RELATED TO "TEASER RATES".

Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended—

(1) by redesignating paragraph (5) as paragraph (7); and

(2) by inserting after paragraph (4) the following:

''(5) ADDITIONAL NOTICE CONCERNING 'TEASER RATES'.—

''(A) IN GENERAL.—An application or solicitation for a credit card for which a disclosure is required under this subsection shall contain the disclosures referred to in subparagraph (B) or (C), as applicable, if the application or solicitation offers, for an introductory period of less than 1 year, an annual percentage rate of interest that—

''(i) is less than the annual percentage rate of interest which will apply after the end of the introductory period; or

''(ii) in the case of an annual percentage rate which varies in accordance with an index, is less than the current annual percentage rate under the index which will apply after the end of the introductory period.

''(B) FIXED ANNUAL PERCENTAGE RATE.—If the annual percentage rate which will apply after the end of the introductory period will be a fixed rate, the application or solicitation shall include the following disclosure: 'The annual percentage rate of interest applicable during the introductory period is not the annual percentage rate which will apply after the end of the introductory period. The non-introductory annual percentage rate will apply after [insert applicable date] and will be [insert applicable percentage rate].'.

''(C) VARIABLE ANNUAL PERCENTAGE RATE.—If the annual percentage rate which will apply after the end of the introductory period will vary in accordance with an index, the application or solicitation shall include the following disclosure: 'The annual percentage rate of interest applicable during the introductory period is not the annual percentage rate which will apply after the end of the introductory period. The permanent annual percentage rate will be determined by an index and will apply after [insert applicable date]. If the index which will apply after such date were applied to your account today, the annual percentage rate would be [insert applicable percentage rate].'.

''(D) CONDITIONS FOR INTRODUCTORY RATES.—If the annual percentage rate of interest which will apply during the introductory period described in subparagraph (A) is revocable or otherwise conditioned upon any action by the obligor, including any failure by the obligor to pay the minimum payment amount or finance charge or to make any payment by the stated monthly payment due date, the application or solicitation shall include a disclosure of—

''(i) the conditions that the obligor must meet in order to retain the annual percentage rate of interest during the introductory period; and

''(ii) the annual percentage rate of interest that will apply as a result of the failure of the obligor to meet such conditions.

''(E) FORM OF DISCLOSURES.—The disclosures required under this paragraph shall be made in a clear and conspicuous manner, in a format that is at least as prominent as the disclosure of the annual percentage rate of interest which will apply during the introductory period.''.

SEC. 212. PAYOFF TIMING DISCLOSURES.

(a) IN GENERAL.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) Repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

''(i) the outstanding balance in the account at the beginning of the statement period, as required by paragraph (1) of this subsection;

''(ii) the required minimum monthly payment on that balance, represented as both a dollar figure and as a percentage of that balance;

''(iii) the due date, within which, payment must be made to avoid addition charges, as required by paragraph (9) of this subsection;

''(iv) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments and if no further advances are made;

''(v) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made; and

''(vi) the monthly payments amount that would be required for the consumer to eliminate the outstanding balance in 36 months if no further advances are made.

''(B)(i) Subject to clause (ii), in making the disclosures under subparagraph (A) the creditor shall apply the interest rate in effect on the date on which the disclosure is made until the date on which the balance would be paid in full.

''(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

''(C) FORM OF DISCLOSURE.—

''(i) IN GENERAL.—All of the information described in subparagraph (A) shall—

''(I) be disclosed in the form and manner which the Board shall prescribe by regulations; and

''(II) be placed in a conspicuous and prominent location on the billing statement in typeface that is at least as large as the largest type on the statement, but in no instance less than 12-point in size.

''(D) TABULAR FORMAT.—

''(i) FORM OF TABLE TO BE PRESCRIBED.—In the regulations prescribed under subparagraph (C), the Board shall require that the disclosure of such information shall be in the form of a table that—

''(I) contains clear and concise headings for each item of such information; and

''(II) provides a clear and concise form stating each item of information required to be disclosed under each such heading.

''(E) REQUIREMENTS REGARDING LOCATION AND ORDER OF TABLE.—In prescribing the form of the table under subparagraph (D), the Board shall require that—

''(i) all of the information in the table, and not just a reference to the table, be placed on the billing statement, as required by this subparagraph; and

''(ii) the items required to be included in the table shall be listed in the order in which such items are set forth in subparagraph (A).

''(F) BOARD DISCRETION IN PRESCRIBING ORDER AND WORDING OF TABLE.—In prescribing the form of the table under subparagraph (C), the Board shall—

''(i) employ terminology which is different than the terminology which is employed in subparagraph (A), if such terminology is easily understood and conveys substantially the same meaning.''.

(b) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended, in the undesignated paragraph following paragraph (4), by striking the second sentence and inserting the following: ''In connection with the disclosures referred to in subsections (a) and (b) of section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, 127(a), or paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 127(b), or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a), or paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 127(b).

SEC. 213. REQUIREMENTS RELATING TO LATE PAYMENT DEADLINES AND PENALTIES.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as amended by this Act, is amended by adding at the end the following:

''(l) REQUIREMENTS RELATING TO LATE PAYMENT DEADLINES AND PENALTIES.—

''(1) LATE PAYMENT DEADLINE AND POSTMARK DATE REQUIRED TO BE DISCLOSED.—In the case of a credit card account under an open end consumer credit plan under which a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment, the periodic statement required under subsection (b) with respect to the account shall include, in a conspicuous location on the billing statement—

''(A) the date on which the payment is due or, if different, the date on which a late payment fee will be charged, together with the amount of the fee or charge to be imposed if payment is made after that date;

''(B) the date by which the payment must be postmarked, if paid by mail, in order to avoid the imposition of a late payment fee with respect to the payment; and

''(C) a statement that no late fee may be imposed in connection with a payment made by mail which was postmarked on or before the postmark date.

''(2) DISCLOSURE OF INCREASE IN INTEREST RATES FOR LATE PAYMENTS.—If 1 or more late payments under an open end consumer credit plan may result in an increase in the annual percentage rate the account, the statement required under subsection (b) with respect to the account shall include conspicuous notice of such fact, together with the applicable penalty annual percentage rate, in close proximity to the disclosure required in paragraph (1) of the date on which payment is due under the terms of the account.

''(3) REQUIREMENTS RELATING TO POSTMARK DATE.—

''(A) IN GENERAL.—The date included in a periodic statement pursuant to paragraph (1)(B) with regard to the postmark on a payment shall allow, in accordance with regulations prescribed by the Board under subparagraph (B), a reasonable time for the consumer to make the payment and a reasonable time for the delivery of the payment by the due date.

''(B) BOARD REGULATIONS.—The Board shall prescribe guidelines for determining a reasonable period of time for making a payment and delivery of a payment for purposes of subparagraph (A), after consultation with the Postmaster General and representatives of consumer and trade organizations.

''(4) PAYMENT AT LOCAL BRANCHES.—If the creditor, in the case of a credit card account referred to in paragraph (1), is a financial institution which maintains branches or offices at which payments on any such account are accepted from the obliger in person, the date on which the obliger makes a payment on the account at such branch or office shall be considered as the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment, to the extent that such payment is made before the close of business of the branch or office on the business day immediately preceding the due date for such payment.''.

TITLE III—RESPONSIBILITIES IN BANKRUPTCY

SEC. 311. AMENDMENTS TO THE BANKRUPTCY CODE.

Section 523(a)(2)(C) of title 11, United States Code, is amended by adding at the end the following: ''However, this subparagraph shall not apply for any portion of debt incurred under an open end credit plan, as defined in section 103 of the Truth in Lending Act, if the annual rate of interest charged with respect to the account was more than 20 percentage points above the Federal prime lending rate on the last day of month during which the interest was charged.''.

TITLE IV—PROTECTION OF YOUNG CONSUMERS

SEC. 411. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.

Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by inserting after paragraph (5), as added by this Act, the following:

''(6) APPLICATIONS FROM UNDERAGE CONSUMERS.—

''(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

''(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by an individual who has not attained the age of 21 as of the date of submission of the application shall require—

''(i) the signature of the parent, legal guardian, or spouse of the consumer, or any other individual having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21;

''(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account; or

''(iii) proof by the consumer that the consumer has completed a credit counseling course of instruction by a nonprofit budget and credit counseling agency approved by the Board for such purpose.

''(C) MINIMUM REQUIREMENTS FOR COUNSELING AGENCIES.—To be approved by the Board under subparagraph (B)(iii), a credit counseling agency shall, at a minimum—

''(i) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

''(I) is not employed by the agency; and

''(II) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

''(ii) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee; and

''(iii) provide trained counselors who receive no commissions or bonuses based on referrals, and demonstrate adequate experience and background in providing credit counseling.''.

SEC. 412. ENHANCED PENALTIES.

Section 130(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1640 (a)(2)(A)(iii)) is amended by striking ''or (iii) in the'' and inserting the following:

''(iii) in the case of an individual action relating to an open end credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of $500 and a maximum of $5,000 or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; or

''(iv) in the''.

SEC. 413. RESTRICTIONS ON CERTAIN AFFINITY CARDS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637), as amended by this Act, is amended by adding at the end the following:

''(m) RESTRICTIONS ON ISSUANCE OF AFFINITY CARDS TO STUDENTS.—No credit card account under an open end credit plan may be established by an individual who has not attained the age of 21 as of the date of submission of the application pursuant to any agreement relating to affinity cards, as defined by the Board, between the creditor and an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), unless the requirements of section 127(c)(6) are met with respect to the obliger.''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 28. Mr. KENNEDY proposed an amendment to the bill S. 256, to amend title 11 of the United States Code, and for other purposes.

SA 29. Mr. KENNEDY proposed an amendment to the bill S. 256, supra.

SA 30. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 31. Mr. DAYTON proposed an amendment to the bill S. 256, supra.

SA 32. Mr. CORZINE (for himself, Ms. MIKULSKI, and Mr. LAUTENBERG) proposed an amendment to the bill S. 256, supra.

SA 33. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 34. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 35. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 36. Mr. KOHL submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 37. Mr. NELSON, of Florida (for himself, Mr. DURBIN, Mr. SCHUMER, and Mrs. CLINTON) proposed an amendment to the bill S. 256, supra.

SA 38. Mr. DURBIN proposed an amendment to the bill S. 256, supra.

SA 39. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 40. Mr. PRYOR submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 41. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 28. Mr. KENNEDY proposed an amendment to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 19, between lines 13 and 14, insert the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is a medically distressed debtor.

''(B) In this paragraph, the term 'medically distressed debtor' means a debtor who, in any consecutive 12-month period during the 3 years before the date of the filing of the petition—

''(i) had medical expenses for the debtor, a dependent of the debtor, or a member of the