

known as the Triad Region: Now, therefore, be it

*Resolved*, That the Senate—

(1) expresses support for the International Home Furnishings Market in High Point, North Carolina;

(2) commends those who organize and participate in the International Home Furnishings Market for their contributions to economic growth and vitality in North Carolina; and

(3) recognizes that the International Home Furnishings Market has a positive economic impact on North Carolina and is vital to a region and State adversely affected by a decline in traditional manufacturing.

#### AMENDMENTS SUBMITTED & PROPOSED

SA 538. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table.

SA 539. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 540. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 541. Mr. KYL submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 542. Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 543. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 544. Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 432 proposed by Mr. CHAMBLISS (for himself and Mr. KYL) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 545. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 546. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 547. Mr. COCHRAN (for Mr. BOND) proposed an amendment to the bill H.R. 1268, supra.

SA 548. Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, supra.

SA 549. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 550. Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 551. Mr. DEWINE submitted an amendment intended to be proposed to amendment SA 439 submitted by Mr. CRAIG (for himself and Mr. AKAKA) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 552. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

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SA 554. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 555. Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, supra.

SA 556. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 557. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 530 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 558. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 529 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 559. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 437 submitted by Mr. ROCKEFELLER and intended to be proposed to the bill H.R. 1268, supra; which was ordered to lie on the table.

SA 560. Mr. COCHRAN (for Mr. SHELBY (for himself, Mr. KENNEDY, Mr. DURBIN, and Mr. OBAMA)) proposed an amendment to the bill H.R. 1268, supra.

SA 561. Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, supra.

SA 562. Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, supra.

#### TEXT OF AMENDMENTS

SA 538. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency

supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, strike line 1 and all that follows through page 35, line 23.

SA 539. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 58, strike line 10 and all that follows through page 65, line 21, and insert the following:

“(3) REQUIRED WAGES.—

“(A) IN GENERAL.—An employer applying for workers shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than the prevailing wage.

“(B) INFORMATION FROM STATES.—In complying with subparagraph (A), an employer may request and obtain a prevailing wage determination from the State employment security agency.

“(C) INFORMATION FROM SURVEYS.—In lieu of the procedure described in subparagraph (B), an employer may rely on other wage information, including a survey of the prevailing wages of workers in the occupation in the area of intended employment that has been conducted or funded by the employer or a group of employers, that meets criteria specified by the Secretary of Labor in regulations.

“(D) COMPLIANCE.—An employer who obtains such prevailing wage determination, or who relies on a qualifying survey of prevailing wages, and who pays the wage determined to be prevailing, shall be considered to have complied with the requirement of subparagraph (A).

“(E) MINIMUM WAGES.—No worker shall be paid less than the greater of the prevailing wage or the applicable State minimum wage.

SA 540. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border

fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, line 5, strike "not".

**SA 541.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 13, strike line 4 and all that follows through page 35, line 23, and insert the following:

(d) APPLICATIONS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Secretary shall provide that applications for temporary resident status under subsection (a) may be filed—

(i) with the Secretary, but only if the applicant is represented by an attorney; or

(ii) with a qualified designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Secretary.

(B) PRELIMINARY APPLICATIONS.—

(i) IN GENERAL.—During the application period described in subsection (a)(1)(B), the Secretary may grant admission to the United States as a temporary resident and provide an "employment authorized" endorsement or other appropriate work permit to any alien who presents a preliminary application for such status under subsection (a) at a designated port of entry on the southern land border of the United States. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in this Act.

(ii) DEFINITION.—For purposes of clause (i), the term "preliminary application" means a fully completed and signed application which contains specific information concerning the performance of qualifying employment in the United States, together with the payment of the appropriate fee and the submission of photographs and the documentary evidence which the applicant intends to submit as proof of such employment.

(iii) ELIGIBILITY.—An applicant under clause (i) shall otherwise be admissible to the United States under subsection (e)(2) and shall establish to the satisfaction of the examining officer during an interview that the applicant's claim to eligibility for temporary resident status is credible.

(C) TRAVEL DOCUMENTATION.—The Secretary shall provide each alien granted status under this section with a counterfeit-resistant document of authorization to enter or reenter the United States that meets the requirements established by the Secretary.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—

(A) IN GENERAL.—For purposes of receiving applications under subsection (a), the Secretary—

(i) shall designate qualified farm labor organizations and associations of employers; and

(ii) may designate such other persons as the Secretary determines are qualified and

have substantial experience, demonstrate competence, and have traditional long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act, Public Law 89-732, Public Law 95-145, or the Immigration Reform and Control Act of 1986.

(B) REFERENCES.—Organizations, associations, and persons designated under subparagraph (A) are referred to in this Act as "qualified designated entities".

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that the alien meets the requirement of subsection (a)(1)(A) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—

(i) BURDEN OF PROOF.—An alien applying for status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days (as required under subsection (a)(1)(A)).

(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(iii) SUFFICIENT EVIDENCE.—An alien can meet the burden of proof under clause (i) to establish that the alien has performed the work described in subsection (a)(1)(A) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(4) TREATMENT OF APPLICATIONS BY QUALIFIED DESIGNATED ENTITIES.—Each qualified designated entity shall agree to forward to the Secretary applications filed with it in accordance with paragraph (1)(A)(i)(II) but shall not forward to the Secretary applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Secretary. Upon the request of the alien, a qualified designated entity shall assist the alien in obtaining documentation of the work history of the alien.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this subsection by qualified designated entities operating under this subsection are confidential and the Secretary shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6).

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Any person who—

- (i) files an application for status under subsection (a) and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(B) INADMISSIBILITY.—An alien who is convicted of a crime under subparagraph (A)

shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(8) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(i) shall be charged for the filing of applications for status under subsection (a); and

(ii) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under subparagraph (A)(ii) for services provided to applicants.

(C) DISPOSITION OF FEES.—

(i) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the "Agricultural Worker Immigration Status Adjustment Account". Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under subparagraph (A)(i).

(ii) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the "Agricultural Worker Immigration Status Adjustment Account" shall remain available to the Secretary until expended for processing applications for status under subsection (a).

(e) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under subsection (a)(1)(C), the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under clause (i).

(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for status under this section by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(f) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(B) and who can establish a nonfrivolous case of eligibility for temporary resident status under subsection (a) (but for the fact that the alien may not apply for such status until the beginning of

such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for temporary resident status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for temporary resident status under subsection (a) during the application period described in subsection (a)(1)(B), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit for such purpose.

(g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for status under subsection (a) or (c) except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(h) DISSEMINATION OF INFORMATION ON ADJUSTMENT PROGRAM.—Beginning not later than the first day of the application period described in subsection (a)(1)(B), the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this section and the requirements to be satisfied to obtain such benefits.

(i) REGULATIONS.—The Secretary shall issue regulations to implement this section not later than the first day of the seventh month that begins after the date of enactment of this Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date that regulations are issued implementing this section on an interim or other basis.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$40,000,000 for each of fiscal years 2006 through 2009.

## SEC. 712. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(d)(1) of the Social Security Act (42 U.S.C. 408(d)(1)) is amended—

(1) in subparagraph (B)(ii), by striking "or" at the end;

(2) in subparagraph (C), by inserting "or" at the end;

(3) by inserting after subparagraph (C) the following:

"(D) who is granted status as a lawful temporary resident under the Agricultural Job Opportunity, Benefits, and Security Act of 2005,"; and

(4) by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted lawful temporary resident status.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of enactment of this Act.

**SA 542.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike lines 5 through 11, and insert the following:

"(9)(A) Subject to subparagraphs (B) and (C), an alien counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.

"(B) A petition referred to in subparagraph (A) shall include, with respect to an alien—

"(i) the full name of the alien; and

"(ii) a certification to the Department of Homeland Security that the alien is a returning worker.

"(C) An H-2B petition for a returning worker shall be approved only if the name of the individual on the petition is confirmed by—

"(i) the Department of State; or

"(ii) if the alien is visa exempt, the Department of Homeland Security.".

**SA 543.** Mr. REED (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and

rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

## SEC. . . ADJUSTMENT OF STATUS.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—The Secretary of Homeland Security (referred to in this section as the "Secretary") shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence, if the alien—

(i) applies for adjustment before April 1, 2007; and

(ii) is otherwise eligible to receive an immigrant visa and admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) INELIGIBLE ALIENS.—An alien shall not be eligible for adjustment of status under this section if the Secretary finds that the alien has been convicted of—

(i) any aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)); or

(ii) 2 or more crimes involving moral turpitude.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been ordered excluded, deported, removed, or to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1) if otherwise qualified under that paragraph.

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the order described in subparagraph (A).

(C) EFFECT OF DECISION BY SECRETARY.—If the Secretary grants the application, the Secretary shall cancel the order. If the Secretary makes a final decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefits provided under subsection (a) shall apply to any alien—

(A) who is—

(i) a national of Liberia; and

(ii) has been continuously present in the United States from January 1, 2005, through the date of application under subsection (a); or

(B) who is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

(2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1), an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence, or absences, from the United States

for any period or periods amounting in the aggregate to not more than 180 days.

(c) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision in the Immigration and Nationality Act, the Secretary shall not order an alien to be removed from the United States if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has made a final determination to deny the application.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an “employment authorized” endorsement or other appropriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application under subsection (a) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize such employment.

(d) RECORD OF PERMANENT RESIDENCE.—Upon approval of an alien’s application for adjustment of status under subsection (a), the Secretary shall establish a record of the alien’s admission for permanent record as of the date of the alien’s arrival in the United States.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—If an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in this section.

(2) SAVINGS PROVISION.—Nothing in this section shall be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

(3) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Eligibility to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude an alien from seeking any status under any other provision of law for which the alien may otherwise be eligible.

**SA 544.** Mr. REED (for himself and Mr. CHAFEE) submitted an amendment

intended to be proposed to amendment SA 432 proposed by Mr. CHAMBLISS (for himself and Mr. KYL) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver’s license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ ADJUSTMENT OF STATUS.**

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—The Secretary of Homeland Security (referred to in this section as the “Secretary”) shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence, if the alien—

(i) applies for adjustment before April 1, 2007; and

(ii) is otherwise eligible to receive an immigrant visa and admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) INELIGIBLE ALIENS.—An alien shall not be eligible for adjustment of status under this section if the Secretary finds that the alien has been convicted of—

(i) any aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)); or

(ii) 2 or more crimes involving moral turpitude.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been ordered excluded, deported, removed, or to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1) if otherwise qualified under that paragraph.

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the order described in subparagraph (A).

(C) EFFECT OF DECISION BY SECRETARY.—If the Secretary grants the application, the Secretary shall cancel the order. If the Secretary makes a final decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefits provided under subsection (a) shall apply to any alien—

(A) who is—

(i) a national of Liberia; and

(ii) has been continuously present in the United States from January 1, 2005, through the date of application under subsection (a); or

(B) who is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

(2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1), an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

(c) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision in the Immigration and Nationality Act, the Secretary shall not order an alien to be removed from the United States if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has made a final determination to deny the application.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an “employment authorized” endorsement or other appropriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application under subsection (a) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize such employment.

(d) RECORD OF PERMANENT RESIDENCE.—Upon approval of an alien’s application for adjustment of status under subsection (a), the Secretary shall establish a record of the alien’s admission for permanent record as of the date of the alien’s arrival in the United States.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—If an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in this section.

(2) SAVINGS PROVISION.—Nothing in this section shall be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

(3) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Eligibility to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude an alien from seeking any status under any other provision of law for which the alien may otherwise be eligible.

**SA 545.** Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 1, strike "At the appropriate place," and insert "On page 204, between lines 4 and 5,".

On page 2, strike lines 1 through 11 and insert the following:

**CHAPTER 5**  
**DEPARTMENT OF DEFENSE**  
**OPERATIONS AND MAINTENANCE**

(a) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency repair of the Fern Ridge Dam, Oregon, \$31,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency work on the Los Angeles-Long Beach Harbor, Mojave River Dam, Port San Luis, and Santa Barbara Harbor, \$7,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(c) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency construction at Lower Santa Ana River Reaches 1 and 2 of the Santa Ana River Project, Prado Dam of the Santa Ana River Project, San Timoteo of the Santa Ana River Project, Murrieta Creek, and Santa Paula Creek, \$12,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(d) The project for navigation, Los Angeles Harbor, California, authorized by section 101(b)(5) of the Water Resources Development Act of 2000 (114 Stat. 2577) is modified to authorize the Secretary of the Army to carry out the project at a total cost of \$222,000,000.

(e) The Secretary of the Army, acting through the Chief of Engineers, shall use any funds appropriated to the Secretary pursuant to this Act to repair, restore, and maintain projects and facilities of the Corps of Engineers, including by dredging navigation

channels, cleaning area streams, providing emergency streambank protection, restoring such public infrastructure as the Secretary determines to be necessary (including sewer and water facilities), conducting studies of the impacts of floods, and providing such flood relief as the Secretary determines to be appropriate: *Provided*, That of those funds, \$32,000,000 shall be used by the Secretary for the Upper Peninsula, Michigan.

**SA 546.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 375 proposed by Mr. CRAIG (for himself and Mr. KENNEDY) to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

**TITLE VII—TEMPORARY AGRICULTURAL WORKERS**

**SEC. 701. SHORT TITLE.**

This title may be cited as the "Temporary Agricultural Work Reform Act of 2005".

**Subtitle A—Temporary H-2A Workers**

**SEC. 711. ADMISSION OF TEMPORARY H-2A WORKERS.**

Section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) is amended to read as follows:

**"ADMISSION OF TEMPORARY H-2A WORKERS**

"SEC. 218. (a) APPLICATION.—An alien may not be admitted as an H-2A worker unless the employer has filed with the Secretary of Homeland Security a petition attesting to the following:

"(1) TEMPORARY OR SEASONAL WORK OR SERVICES.—

"(A) IN GENERAL.—The agricultural employment for which the H-2A worker or workers is or are sought is temporary or seasonal, the number of workers sought, and the wage rate and conditions under which they will be employed.

"(B) TEMPORARY OR SEASONAL WORK.—For purposes of subparagraph (A), a worker is employed on a 'temporary' or 'seasonal' basis if the employment is intended not to exceed 10 months.

"(2) BENEFITS, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (m) to all workers employed in the jobs for which the H-2A worker or workers is or are sought and to all other temporary workers in the same occupation at the place of employment.

"(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and during a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer seeks approval to employ H-2A workers.

"(4) RECRUITMENT.—

"(A) IN GENERAL.—The employer shall attest that the employer—

"(i) conducted adequate recruitment in the metropolitan statistical area of intended employment before filing the attestation; and

"(ii) was unsuccessful in locating qualified United States workers for the job opportunity for which the certification is sought.

"(B) RECRUITMENT.—The adequate recruitment requirement under subparagraph (A) is satisfied if the employer—

"(i) places a job order with America's Job Bank Program of the Department of Labor; and

"(ii) places a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal or ethnic publication that is likely to be patronized by a potential worker in the area of intended employment.

"(C) ADVERTISEMENT CRITERIA.—The advertisement requirement under subparagraph (B)(ii) is satisfied if the advertisement—

"(i) names the employer;

"(ii) directs applicants to report or send resumes, as appropriate for the occupation, to the employer;

"(iii) provides a description of the vacancy that is specific enough to apprise United States workers of the job opportunity for which certification is sought;

"(iv) describes the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job;

"(v) states the rate of pay, which must equal or exceed the wage paid for the occupation in the area of intended employment; and

"(vi) offers wages, terms, and conditions of employment, which are at least as favorable as those offered to the alien.

"(5) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job for which the nonimmigrant is, or the nonimmigrants are, sought to any eligible United States worker who applies and is equally or better qualified for the job and who will be available at the time and place of need.

"(6) PROVISION OF INSURANCE.—If the job for which the nonimmigrant is, or the nonimmigrants are, sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(7) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H-2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

"(8) PREVIOUS VIOLATIONS.—The employer has not, during the previous 5-year period, employed H-2A workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Labor after notice and opportunity for a hearing.

"(b) PUBLICATION.—The employer shall make available for public examination, within 1 working day after the date on which a petition under this section is filed, at the employer's principal place of business or worksite, a copy of each such petition (and such accompanying documents as are necessary).

"(c) LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer) of the petitions filed under subsection (a). Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for public examination in Washington, District of Columbia.

“(d) SPECIAL RULES FOR CONSIDERATION OF PETITIONS.—The following rules shall apply in the case of the filing and consideration of a petition under subsection (a):

“(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Homeland Security may not require that the petition be filed more than 28 days before the first date the employer requires the labor or services of the H-2A worker or workers.

“(2) ISSUANCE OF APPROVAL.—Unless the Secretary of Homeland Security finds that the petition is incomplete or obviously inaccurate, the Secretary of Homeland Security shall provide a decision within 7 days of the date of the filing of the petition.

“(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

“(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to hire an alien as a temporary agricultural worker may be filed by an association of agricultural producers which use agricultural services.

“(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the petition was approved.

“(3) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under this section of an employer who places an H-2A worker with another H-2A employer if the other employer displaces a United States worker in violation of the condition described in subsection (a)(7).

“(4) TREATMENT OF VIOLATIONS.—

“(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that is in violation of the conditions for approval with respect to the member's petition, the denial shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

“(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—

“(i) JOINT EMPLOYER.—If an association representing agricultural producers as a joint employer is determined to have committed an act that is in violation of the conditions for approval with respect to the association's petition, the denial shall apply only to the association and does not apply to any individual producer member of the association, unless the Secretary of Labor determines that the member participated in, had knowledge of, or had reason to know of the violation.

“(ii) SOLE EMPLOYER.—If an association of agricultural producers approved as a sole employer is determined to have committed an act that is in violation of the conditions for approval with respect to the association's petition, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied approval during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

“(f) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—Regulations shall provide for an expedited procedure for the review of a denial of approval under this

section, or at the applicant's request, for a de novo administrative hearing respecting the denial.

“(g) MISCELLANEOUS PROVISIONS.—

“(1) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii)(a) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

“(2) PREEMPTION OF STATE LAWS.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

“(3) FEES.—

“(A) IN GENERAL.—The Secretary of Homeland Security may require, as a condition of approving the petition, the payment of a fee in accordance with subparagraph (B) to recover the reasonable costs of processing petitions.

“(B) AMOUNTS.—

“(i) EMPLOYER.—The fee for each employer that receives a temporary alien agricultural labor certification shall be equal to \$100 plus \$10 for each job opportunity for H-2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall not exceed \$1,000.

“(ii) JOINT EMPLOYER ASSOCIATION.—In the case of a joint employer association that receives a temporary alien agricultural labor certification, each employer-member receiving such certification shall pay a fee equal to \$100 plus \$10 for each job opportunity for H-2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall not exceed \$1,000. The joint employer association shall not be charged a separate fee.

“(C) PAYMENTS.—The fees collected under this paragraph shall be paid by check or money order made payable to the ‘Department of Homeland Security’. In the case of employers of H-2A workers that are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H-2A workers under the petition may be paid by 1 check or money order.

“(D) INFLATION ADJUSTMENT.—In the case of any calendar year beginning after 2005, each dollar amount in subparagraph (B) may be increased by an amount equal to—

“(i) such dollar amount; multiplied by

“(ii) the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the preceding calendar year exceeds such average for the 12-month period ending with August 2004.

“(h) FAILURE TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (a), or a material misrepresentation of fact in a petition under subsection (a)—

“(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(2) the Secretary of Homeland Security may disqualify the employer from the employment of H-2A workers for a period of 1 year.

“(i) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (a) or a willful misrepresentation of a material fact in a petition under subsection (a)—

“(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$5,000 per violation) as the Secretary of Labor determines to be appropriate;

“(2) the Secretary of Homeland Security may disqualify the employer from the employment of H-2A workers for a period of 2 years;

“(3) for a second violation, the Secretary of Homeland Security may disqualify the employer from the employment of H-2A workers for a period of 5 years; and

“(4) for a third violation, the Secretary of Homeland Security may permanently disqualify the employer from the employment of H-2A workers.

“(j) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (a) or a willful misrepresentation of a material fact in a petition under subsection (a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's petition under subsection (a) or during the period of 30 days preceding such period of employment—

“(1) the Secretary of Labor shall notify the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$15,000 per violation) as the Secretary of Labor determines to be appropriate;

“(2) the Secretary of Homeland Security may disqualify the employer from the employment of H-2A workers for a period of 5 years; and

“(3) for a second violation, the Secretary of Homeland Security may permanently disqualify the employer from the employment of H-2A workers.

“(k) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to a petition under subsection (a) in excess of \$90,000.

“(l) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment required under subsection (a)(2), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H-2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under subsection (a)(2) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

“(m) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—

“(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

“(A) IN GENERAL.—Employers seeking to hire United States workers shall offer the United States workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H-2A workers.

“(B) INTERPRETATIONS AND DETERMINATIONS.—While benefits, wages, and other terms and conditions of employment specified in this subsection are required to be provided in connection with employment under



this section, every interpretation and determination made under this Act or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made in conformance with the governing principles that the services of workers to their employers and the employment opportunities afforded to workers by their employers, including those employment opportunities that require United States workers or H-2A workers to travel or relocate in order to accept or perform employment, mutually benefit such workers, as well as their families, and employers, principally benefitting neither, and that employment opportunities within the United States further benefit the United States economy as a whole and should be encouraged.

“(2) REQUIRED WAGES.—

“(A) An employer applying for workers under subsection (a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less than the prevailing wage.

“(B) In complying with subparagraph (A), an employer may request and obtain a prevailing wage determination from the State employment security agency.

“(C) In lieu of the procedure described in subparagraph (B), an employer may rely on other wage information, including a survey of the prevailing wages of workers in the occupation in the area of intended employment that has been conducted or funded by the employer or a group of employers, that meets criteria specified by the Secretary of Labor in regulations.

“(D) An employer who obtains such prevailing wage determination, or who relies on a qualifying survey of prevailing wages, and who pays the wage determined to be prevailing, shall be considered to have complied with the requirement of subparagraph (A).

“(E) No worker shall be paid less than the greater of the prevailing wage or the applicable State minimum wage.

“(3) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

“(A) IN GENERAL.—An employer applying for workers under subsection (a) shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

“(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing, or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable State or local standards, Federal temporary labor camp standards shall apply.

“(C) CERTIFICATE OF INSPECTION.—Prior to any occupation by a worker in housing described in subparagraph (B), the employer shall submit a certificate of inspection by an approved Federal or State agency to the Secretary of Labor.

“(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

“(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for per-

sons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

“(F) HOUSING ALLOWANCE AS ALTERNATIVE.—

“(i) IN GENERAL.—The employer may provide a reasonable housing allowance in lieu of offering housing under subparagraph (A) if the requirement under clause (v) is satisfied.

“(ii) ASSISTANCE TO LOCATE HOUSING.—Upon the request of a worker seeking assistance in locating housing, the employer shall make a good-faith effort to assist the worker in locating housing in the area of intended employment.

“(iii) LIMITATION.—A housing allowance may not be used for housing which is owned or controlled by the employer. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance.

“(iv) REPORTING REQUIREMENT.—The employer must provide the Secretary of Labor with a list of the names of all workers assisted under this subparagraph and the local address of each such worker.

“(v) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers, and H-2A workers, who are seeking temporary housing while employed at farm work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

“(vi) AMOUNT OF ALLOWANCE.—

“(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

“(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

“(G) EXEMPTION.—An employer applying for workers under subsection (a) whose primary job site is located 150 miles or less from the United States border shall not be required to provide housing or a housing allowance.

“(4) REIMBURSEMENT OF TRANSPORTATION.—

“(A) TO PLACE OF EMPLOYMENT.—

“(i) IN GENERAL.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired, measured from the worker's first day of work in such employment, shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker was approved to enter the United States to work for the employer (or place of last employment, if the worker traveled from such

place) to the place of employment by the employer.

“(ii) OTHER FEES.—The employer shall not be required to reimburse visa, passport, consular, or international border-crossing fees or any other fees associated with the worker's lawful admission into the United States to perform employment that may be incurred by the worker.

“(iii) TIMELY REIMBURSEMENT.—Reimbursement to the worker of expenses for the cost of the worker's transportation and subsistence to the place of employment shall be considered timely if such reimbursement is made not later than the worker's first regular payday after the worker completes 50 percent of the period of employment of the job opportunity as provided under this paragraph.

“(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker was approved to enter the United States to work for the employer.

“(C) LIMITATION.—

“(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

“(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

“(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

“(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less or if the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (3).

“(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (5)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

“(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters (such as housing provided by the employer pursuant to paragraph (3), including housing provided through a housing allowance) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

“(5) GUARANTEE OF EMPLOYMENT.—

“(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least 75 percent of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H-2A worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

“(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(C) ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 75 percent guarantee described in subparagraph (A).

“(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster (including a flood, hurricane, freeze, earthquake, fire, or drought), plant or animal disease, pest infestation, or regulatory action, before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker.

“(n) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H-2A worker must file a petition with the Secretary of Homeland Security. The petition shall include the attestations for the certification described in section 101(a)(15)(H)(ii)(a).

“(o) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary of Homeland Security—

“(1) shall establish a procedure for expedited adjudication of petitions filed under subsection (n); and

“(2) not later than 7 working days after such filing shall, by fax, cable, or other means assuring expedited delivery transmit a copy of notice of action on the petition—

“(A) to the petitioner; and

“(B) in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate where the petitioner has indicated that the alien beneficiary or beneficiaries will apply for a visa or admission to the United States.

“(p) DISQUALIFICATION.—

“(1) Subject to paragraph (2), an alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years, violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission.

“(2) WAIVERS.—

“(A) IN GENERAL.—An alien outside the United States, and seeking admission under section 101(a)(15)(H)(ii)(a), shall not be deemed inadmissible under such section by reason of paragraph (1) or section 212(a)(9)(B) if the previous violation occurred on or before April 1, 2005.

“(B) LIMITATION.—In any case in which an alien is admitted to the United States upon having a ground of inadmissibility waived under subparagraph (A), such waiver shall be considered to remain in effect unless the

alien again violates a material provision of this section or otherwise violates a term or condition of admission into the United States as a nonimmigrant, in which case such waiver shall terminate.

“(q) ABANDONMENT OF EMPLOYMENT.—

“(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status as an H-2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

“(2) REPORT BY EMPLOYER.—The employer (or association acting as agent for the employer) shall notify the Secretary of Homeland Security within 7 days of an H-2A worker's having prematurely abandoned employment.

“(3) REMOVAL BY THE SECRETARY.—The Secretary of Homeland Security shall promptly remove from the United States any H-2A worker who violates any term or condition of the worker's nonimmigrant status.

“(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

“(r) REPLACEMENT OF ALIEN.—

“(1) IN GENERAL.—Upon presentation of the notice to the Secretary of Homeland Security required by subsection (q)(2), the Secretary of State shall promptly issue a visa to, and the Secretary of Homeland Security shall admit into the United States, an eligible alien designated by the employer to replace an H-2A worker who abandons or prematurely terminates employment.

“(2) CONSTRUCTION.—Nothing in this subsection shall limit any preference required to be accorded United States workers under any other provision of this Act.

“(s) IDENTIFICATION DOCUMENT.—

“(1) IN GENERAL.—The Department of Homeland Security shall provide each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) with a single machine-readable, tamper-resistant, and counterfeit-resistant document that—

“(A) authorizes the alien's entry into the United States; and

“(B) serves, for the appropriate period, as an employment eligibility document.

“(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

“(A) The document shall be capable of reliably determining whether—

“(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

“(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

“(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H-2A worker.

“(B) The document shall—

“(i) be compatible with other databases of the Secretary of Homeland Security for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

“(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

“(t) EXTENSION OF STAY OF H-2A WORKERS IN THE UNITED STATES.—

“(1) EXTENSION OF STAY.—

“(A) IN GENERAL.—An employer may seek up to 2 10-month extensions under this subsection.

“(B) PETITION.—If an employer seeks to employ an H-2A worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (n) shall request an extension of the alien's stay.

“(C) COMMENCEMENT; MAXIMUM PERIOD.—An extension of stay under this subsection—

“(i) may only commence upon the termination of the H-2A worker's contract with an employer; and

“(ii) may not exceed 10 months unless the employer files a written request for up to an additional 30 days accompanied by justification that the need for such additional time is necessitated by adverse weather conditions, acts of God, or economic hardship beyond the control of the employer.

“(D) FUTURE ELIGIBILITY.—At the conclusion of 3 10-month employment periods authorized under this section, the alien so employed may not be employed in the United States as an H-2A worker until the alien has returned to the alien's country of nationality or country of last residence for not less than 6 months.

“(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

“(A) IN GENERAL.—An alien who is lawfully present in the United States may commence or continue the employment described in a petition under paragraph (1) on the date on which the petition is filed. The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

“(B) APPROVAL.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

“(C) DEFINITION.—In this paragraph, the term ‘file’ means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

“(u) SPECIAL RULE FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—Notwithstanding any other provision of this section, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a shepherd, goatherder, or dairy worker may be admitted for a period of up to 2 years.

“(v) DEFINITIONS.—For purposes of this section:

“(1) AREA OF EMPLOYMENT.—The term ‘area of employment’ means the area within normal commuting distance of the worksite or physical location where the work of the H-2A worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

“(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to that employment.

“(3) DISPLACE.—In the case of a petition with respect to 1 or more H-2A workers by an employer, the employer is considered to ‘displace’ a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the



job for which the H-2A worker or workers is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

“(4) H-2A WORKER.—The term ‘H-2A worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

“(5) LAYS OFF.—

“(A) IN GENERAL.—The term ‘lays off’, with respect to a worker—

“(i) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) or (7) of subsection (a); but

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (a)(7), with either employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(6) PREVAILING WAGE.—The term ‘prevailing wage’ means, with respect to an agricultural occupation in an area of intended employment, the rate of wages that includes the 51st percentile of employees with similar experience and qualifications in the agricultural occupation in the area of intended employment, expressed in terms of the prevailing method of pay for the occupation in the area of intended employment.

“(7) UNITED STATES WORKER.—The term ‘United States worker’ means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien authorized to work in the relevant job opportunity within the United States, except—

“(A) an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a); and

“(B) an alien provided status under section 220.”

#### SEC. 712. LEGAL ASSISTANCE PROVIDED BY THE LEGAL SERVICES CORPORATION.

Section 305 of the Immigrant Reform and Control Act of 1986 (8 U.S.C. 1101 note) is amended—

(1) by striking “A nonimmigrant” and inserting the following:

“(a) IN GENERAL.—A nonimmigrant”; and

(2) by adding at the end the following:

“(b) LEGAL ASSISTANCE.—The Legal Services Corporation may not provide legal assistance for or on behalf of any alien, and may not provide financial assistance to any person or entity that provides legal assistance for or on behalf of any alien, unless the alien—

“(1) is present in the United States at the time the legal assistance is provided; and

“(2) is an alien to whom subsection (a) applies.”

“(c) REQUIRED MEDIATION.—No party may bring a civil action for damages on behalf of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) or pursuant to those in the Blue Card Pro-

gram established under section 220 of such Act, unless at least 90 days before bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.”

#### Subtitle B—Blue Card Status

##### SEC. 721. BLUE CARD PROGRAM.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:

##### “BLUE CARD PROGRAM

“SEC. 220. (a) DEFINITIONS.—As used in this section—

“(1) the term ‘agricultural employment’—

“(A) means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986; and

“(B) includes any service or activity described in—

“(i) title 37, 37–3011, or 37–3012 (relating to landscaping) of the Department of Labor 2004–2005 Occupational Information Network Handbook;

“(ii) title 45 (relating to farming fishing, and forestry) of such handbook; or

“(iii) title 51, 51–3022, or 51–3023 (relating to meat, poultry, fish processors and packers) of such handbook.

“(2) the term ‘blue card status’ means the status of an alien who has been—

“(A) lawfully admitted for a temporary period under subsection (b); and

“(B) issued a tamper-resistant, machine-readable document that serves as the alien’s visa, employment authorization, and travel documentation and contains such biometrics as are required by the Secretary;

“(3) the term ‘employer’ means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment;

“(4) the term ‘Secretary’ means the Secretary of Homeland Security;

“(5) the term ‘small employer’ means an employer employing fewer than 500 employees based upon the average number of employees for each of the pay periods for the preceding 10 calendar months, including the period in which the employer employed H-2A workers; and

“(6) the term ‘United States worker’ means any worker, whether a United States citizen or national, a lawfully admitted permanent resident alien, or any other alien authorized to work in the relevant job opportunity within the United States, except—

“(A) an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a); and

“(B) an alien provided status under this section.

“(b) BLUE CARD PROGRAM.—

“(1) BLUE CARD PROGRAM.—Notwithstanding any other provision of law, the Secretary shall confer blue card status upon an alien who qualifies under this subsection if the Secretary determines that the alien—

“(A) has been in the United States continuously as of April 1, 2005;

“(B) has performed more than 50 percent of total annual weeks worked in agricultural employment in the United States (except in the case of a child provided derivative status as of April 1, 2005);

“(C) is otherwise admissible to the United States under section 212, except as otherwise provided under paragraph (2); and

“(D) is the beneficiary of a petition filed by an employer, as described in paragraph (3).

“(2) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—In determining an alien’s eligibility for blue card status under paragraph (1)(C)—

“(A) the provisions of paragraphs (5), (6)(A), (7)(A), and (9)(B) of section 212(a) shall not apply;

“(B) the provisions of section 212(a)(6)(C) shall not apply with respect to prior or current agricultural employment; and

“(C) the Secretary may not waive paragraph (1), (2), or (3) of section 212(a) unless such waiver is permitted under another provision of law.

“(3) PETITIONS.—

“(A) IN GENERAL.—An employer seeking blue card status under this section for an alien employee shall file a petition for blue card status with the Secretary.

“(B) EMPLOYER PETITION.—An employer filing a petition under subparagraph (A) shall—

“(i) pay a registration fee of—

“(I) \$1,000, if the employer employs more than 500 employees; or

“(II) \$500, if the employer is a small employer employing 500 or fewer employees;

“(ii) pay a processing fee to cover the actual costs incurred in adjudicating the petition; and

“(iii) attest that the employer conducted adequate recruitment in the metropolitan statistical area of intended employment before filing the attestation and was unsuccessful in locating qualified United States workers for the job opportunity for which the certification is sought, which attestation shall be valid for a period of 60 days.

“(C) RECRUITMENT.—

“(i) The adequate recruitment requirement under subparagraph (B)(iii) is satisfied if the employer—

“(I) places a job order with America’s Job Bank Program of the Department of Labor; and

“(II) places a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal or ethnic publication that is likely to be patronized by a potential worker in the metropolitan statistical area of intended employment.

“(ii) An advertisement under clause (i)(II) shall—

“(I) name the employer;

“(II) direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

“(III) provide a description of the vacancy that is specific enough to apprise United States workers of the job opportunity for which certification is sought;

“(IV) describe the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job;

“(V) state the rate of pay, which must equal or exceed the wage paid for the occupation in the area of intended employment; and

“(VI) offer wages, terms, and conditions of employment, which are at least as favorable as those offered to the alien.

“(D) NOTIFICATION OF DENIAL.—The Secretary shall provide notification of a denial of a petition filed for an alien to the alien and the employer who filed such petition.

“(E) EFFECT OF DENIAL.—If the Secretary denies a petition filed for an alien, such alien shall return to the country of the alien’s nationality or last residence outside the United States.

“(4) BLUE CARD STATUS.—

“(A) BLUE CARD.—

“(i) ALL-IN-ONE CARD.—The Secretary, in conjunction with the Secretary of State, shall develop a single machine-readable, tamper-resistant document that—

“(I) authorizes the alien’s entry into the United States;

“(II) serves, during the period an alien is in blue card status, as an employment authorized endorsement or other appropriate work permit for agricultural employment only; and

“(III) serves as an entry and exit document to be used in conjunction with a proper visa or as a visa and as other appropriate travel and entry documentation using biometric identifiers that meet the biometric identifier standards jointly established by the Secretary of State and the Secretary.

“(ii) BIOMETRICS.—

“(I) After a petition is filed by an employer and receipt of such petition is confirmed by the Secretary, the alien, in order to further adjudicate the petition, shall submit 2 biometric identifiers, as required by the Secretary, at an Application Support Center.

“(II) The Secretary shall prescribe a process for the submission of a biometric identifier to be incorporated electronically into an employer’s prior electronic filing of a petition. The Secretary shall prescribe an alternative process for employers to file a petition in a manner other than electronic filing, as needed.

“(B) DOCUMENT REQUIREMENTS.—The Secretary shall issue a blue card that is—

“(i) capable of reliably determining if the individual with the blue card whose eligibility is being verified is—

“(I) eligible for employment;

“(II) claiming the identity of another person; and

“(III) authorized to be admitted; and

“(ii) compatible with—

“(I) other databases maintained by the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

“(II) law enforcement databases to determine if the alien has been convicted of criminal offenses.

“(C) AUTHORIZED TRAVEL.—During the period an alien is in blue card status granted under this section and pursuant to regulations established by the Secretary, the alien may make brief visits outside the United States. An alien may be readmitted to the United States after such a visit without having to obtain a visa if the alien presents the alien’s blue card document. Such periods of time spent outside the United States shall not cause the period of blue card status in the United States to be extended.

“(D) PORTABILITY.—

“(i) During the period in which an alien is in blue card status, the alien issued a blue card may accept new employment upon the Secretary’s receipt of a petition filed by an employer on behalf of the alien. Employment authorization shall continue for such alien until such petition is adjudicated.

“(ii) If a petition filed under clause (i) is denied and the alien has ceased employment with the previous employer, the authorization under clause (i) shall terminate and the alien shall be required to return to the country of the alien’s nationality or last residence.

“(iii) A fee may be required by the Secretary to cover the actual costs incurred in adjudicating a petition under this subparagraph. No other fee may be required under this subparagraph.

“(iv) A petition by an employer under this subparagraph may not be accepted within 90 days after the adjudication of a previous petition on behalf of an alien.

“(E) ANNUAL CHECK IN.—The employer of an alien in blue card status who has been employed for 1 year in blue card status shall confirm the alien’s continued employment status with the Secretary electronically or

in writing. Such confirmation will not require a further labor attestation.

“(F) TERMINATION OF BLUE CARD STATUS.—

“(i) During the period of blue card status granted an alien, the Secretary may terminate such status upon a determination by the Secretary that the alien is deportable or has become inadmissible.

“(ii) The Secretary may terminate blue card status granted to an alien if—

“(I) the Secretary determines that, without the appropriate waiver, the granting of blue card status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i));

“(II) the alien is convicted of a felony or a misdemeanor committed in the United States; or

“(III) the Secretary determines that the alien is deportable or inadmissible under any other provision of this Act.

“(5) PERIOD OF AUTHORIZED ADMISSION.—

“(A) IN GENERAL.—The initial period of authorized admission for an alien with blue card status shall be not more than 3 years. The employer of such alien may petition for extensions of such authorized admission for 2 additional periods of not more than 3 years each.

“(B) EXCEPTION.—The limit on renewals shall not apply to a nonimmigrant in a position of full-time, non-temporary employment who has managerial or supervisory responsibilities. The employer of such nonimmigrant shall be required to make an additional attestation to such an employment classification with the filing of a petition.

“(C) REPORTING REQUIREMENT.—If an alien with blue card status ceases to be employed by an employer, such employer shall immediately notify the Secretary of such cessation of employment. The Secretary shall provide electronic means for making such notification.

“(D) LOSS OF EMPLOYMENT.—

“(i) An alien’s blue card status shall terminate if the alien is unemployed for 60 or more consecutive days.

“(ii) An alien whose period of authorized admission terminates under clause (i) shall be required to return to the country of the alien’s nationality or last residence.

“(6) GROUNDS FOR INELIGIBILITY.—

“(A) BAR TO FUTURE VISAS FOR CONDITION VIOLATIONS.—Any alien having blue card status shall not again be eligible for the same blue card status if the alien violates any term or condition of such status.

“(B) ALIENS UNLAWFULLY PRESENT.—Any alien who enters the United States after April 1, 2005, without being admitted or paroled shall be ineligible for blue card status.

“(C) ALIENS IN H-2A STATUS.—Any alien in lawful H-2A status as of April 1, 2005, shall be ineligible for blue card status.

“(7) BAR ON CHANGE OR ADJUSTMENT OF STATUS.—

“(A) IN GENERAL.—An alien having blue card status shall not be eligible to change or adjust status in the United States or obtain a different nonimmigrant or immigrant visa from a United States Embassy or consulate.

“(B) LOSS OF ELIGIBILITY.—An alien having blue card status shall lose eligibility for such status if the alien—

“(i) files a petition to adjust status to legal permanent residence in the United States; or

“(ii) requests a consular processing for an immigrant visa outside the United States.

“(C) EXCEPTION.—An alien having blue card status may not adjust status to legal permanent resident status or obtain another nonimmigrant or immigrant status unless—

“(i) the alien renounces his or her blue card status by providing written notification to the Secretary of Homeland Security or the Secretary of State; or

“(II) the alien’s blue card status otherwise expires; and

“(ii) the alien has resided and been physically present in the alien’s country of nationality or last residence for not less than 1 year after leaving the United States and the renouncement or expiration of blue card status.

“(8) JUDICIAL REVIEW.—There shall be no judicial review of a denial of blue card status.

“(c) SAFE HARBOR.—

“(1) SAFE HARBOR OF ALIEN.—An alien for whom a nonfrivolous petition is filed under this section—

“(A) shall be granted employment authorization pending final adjudication of the petition;

“(B) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the petition for change in status, unless the alien commits an act which renders the alien ineligible for such change of status; and

“(C) may not be considered an unauthorized alien as defined in section 274A(h)(3) until such time as the petition for status is adjudicated.

“(2) SAFE HARBOR FOR EMPLOYER.—An employer that files a petition for blue card status for an alien shall not be subject to civil and criminal tax liability relating directly to the employment of such alien. An employer that provides unauthorized aliens with copies of employment records or other evidence of employment pursuant to the petition shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

“(d) TREATMENT OF SPOUSES AND CHILDREN.—

“(1) SPOUSES.—A spouse of an alien having blue card status shall not be eligible for derivative status by accompanying or following to join the alien. Such a spouse may obtain status based only on an independent petition filed by an employer petitioning under subsection (b)(3) with respect to the employment of the spouse.

“(2) CHILDREN.—A child of an alien having blue card status shall not be eligible for the same temporary status unless—

“(A) the child is accompanying or following to join the alien; and

“(B) the alien is the sole custodial parent of the child or both custodial parents of the child have obtained such status.”.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 219 the following:

“Sec. 220 Blue card program.”.

#### SEC. 722. PENALTIES FOR FALSE STATEMENTS.

Section 1546 of title 18, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) Any person, including the alien who is the beneficiary of a petition, who—

“(1) files a petition under section 220(b)(3) of the Immigration and Nationality Act; and

“(2)(A) knowingly and willfully falsifies, conceals, or covers up a material fact related to such a petition;

“(B) makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry related to such a petition; or

“(C) creates or supplies a false writing or document for use in making such a petition, shall be fined in accordance with this title, imprisoned not more than 5 years, or both.”.

**SEC. 723. SECURING THE BORDERS.**

Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a comprehensive plan for securing the borders of the United States.

**SEC. 724. EFFECTIVE DATE.**

This subtitle shall take effect on the date that is 6 months after the date of enactment of this Act.

**SA 547.** Mr. COCHRAN (for Mr. BOND) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

Insert the following on page 203, after line 17:

“OFFICE OF FEDERAL HOUSING ENTERPRISE  
OVERSIGHT SALARIES AND EXPENSES  
(INCLUDING TRANSFER OF FUNDS)

For an additional amount for the “Office of Federal Housing Enterprise Oversight” for carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, \$5,000,000 to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: Provided, That not to exceed the amount provided herein shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: Provided further, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than \$0.”.

**SA 548.** Mr. COCHRAN (for Mr. LEAHY) proposed an amendment to the bill H.R. 1268, Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

PROTECTION OF THE GALAPAGOS

Sec. \_\_\_\_\_. (a) FINDINGS.—The Senate makes the following findings—

(1) The Galapagos Islands are a global treasure and World Heritage Site, and the future of the Galapagos is in the hands of the Government of Ecuador;

(2) The world depends on the Government of Ecuador to implement the necessary policies and programs to ensure the long term protection of the biodiversity of the Galapagos, including enforcing the Galapagos Special Law;

(3) There are concerns with the current leadership of the Galapagos National Park Service and that the biodiversity of the Ga-

lapagos and the Marine Reserve are not being properly managed or adequately protected; and

(4) The Government of Ecuador has reportedly given preliminary approval for commercial airplane flights to the Island of Isabela, which may cause irreparable harm to the biodiversity of the Galapagos, and has allowed the export of fins from sharks caught accidentally in the Marine Reserve, which encourages illegal fishing.

(b) Whereas, now therefore, be it

Resolved, that—

(1) the Senate strongly encourages the Government of Ecuador to—

(A) refrain from taking any action that could cause harm to the biodiversity of the Galapagos or encourage illegal fishing in the Marine Reserve;

(B) abide by the agreement to select the Directorship of the Galapagos National Park Service through a transparent process based on merit as previously agreed by the Government of Ecuador, international donors, and nongovernmental organizations; and

(C) enforce the Galapagos Special Law in its entirety, including the governance structure defined by the law to ensure effective control of migration to the Galapagos and sustainable fishing practices, and prohibit long-line fishing which threatens the survival of shark and marine turtle populations.

(2) The Department of State should—

(A) emphasize to the Government of Ecuador the importance the United States gives to these issues; and

(B) offer assistance to implement the necessary policies and programs to ensure the long term protection of the biodiversity of the Galapagos and the Marine Reserve and to sustain the livelihoods of the Galapagos population who depend on the marine ecosystem for survival.

**SA 549.** Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after “Sec.”, and insert the following:

**6407. CLARIFICATION OF PAYMENT TERMS  
UNDER TRADE SANCTIONS REFORM  
AND EXPORT ENHANCEMENT ACT  
OF 2000.**

(a) IN GENERAL.—Section 908(b)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7207(b)(1)) is amended by inserting after subparagraph (B) the following:

“(C) Notwithstanding any other provision of law, the term ‘payment of cash in advance’ means the payment by the purchaser of an agricultural commodity or product and the receipt of such payment by the seller prior to—

“(i) the transfer of title of such commodity or product to the purchaser; and

“(ii) the release of control of such commodity or product to the purchaser.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales of agricultural commodities made on or after February 22, 2005.

**SA 550.** Mr. VITTER submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, between lines 3 and 4, insert the following:

SEC. 6047. (a) Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall determine whether there is enough evidence—

(1) to determine the ownership of the subsurface mineral rights described in subsection (b); and

(2) to bring an action to quiet title with respect to the ownership of the subsurface mineral rights described in that subsection.

(b) The subsurface mineral rights referred to in subsection (a) are the subsurface mineral rights underlying 3588.34 acres of land in the Sabine National Wildlife Refuge (referred to in this section as the “Refuge”) originally reserved by Stanolind Oil and Gas Company and described as tract 5c in a Judgment of Taking dated December 14, 1937, as recorded in the records of Cameron Parish, Louisiana.

(c) If the Secretary of the Interior determines that sufficient evidence exists under subsection (a), not later than 30 days after the date of the determination, the Secretary shall bring an action in the United States District Court for the State of Louisiana to resolve the title issue.

(d) Notwithstanding section 137 of Public Law 98-151 (97 Stat. 981) and section 3101.5-1 of title 43, Code of Federal Regulations (or a successor regulation), if the action brought under subsection (c) is resolved in favor of the United States, the Secretary of the Interior shall make available for leasing at the first Bureau of Land Management-Eastern States lease sale occurring after the date of enactment of this Act the subsurface mineral rights described in subsection (b).

(e) Any lease sale that takes place under subsection (d) and any exploration, development, or production of the subsurface mineral rights under a lease issued under that subsection shall be carried out in accordance with applicable regulations of the Department of the Interior, including regulations relating to a binding oral bid.

(f)(1) Any exploration, development, or production from a lease issued under subsection (d) shall be from an area outside the Refuge.

(2) No exploration or production activities shall be conducted on the surface of the Refuge.

**SA 551.** Mr. DEWINE submitted an amendment intended to be proposed to amendment SA 439 submitted by Mr. CRAIG (for himself and Mr. AKAKA) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and

rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 3, strike "(c)" and insert the following:

(c) RETROACTIVE PROVISION.—

(1) IN GENERAL.—Any member who experienced a traumatic injury (as described in section 1980A(b)(1) of title 38, United States Code) between October 7, 2001, and the effective date under subsection (d), is eligible for coverage provided in such section 1980A if the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.

(2) CERTIFICATION; PAYMENT.—The Secretary of Defense shall—

(A) certify to the Office of Servicemembers' Group Life Insurance the names and addresses of those members the Secretary of Defense determines to be eligible for retroactive traumatic injury benefits under such section 1980A; and

(B) forward to the Secretary of Veterans Affairs, at the time the certification is made under subparagraph (A), an amount of money equal to the amount the Secretary of Defense determines to be necessary to pay all cost related to claims for retroactive benefits under such section 1980A.

(d)

**SA 552.** Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 475 submitted by Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, and Mr. ENZI) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

In the matter proposed to be inserted—

(1) strike subsections (b) and (c), and

(2) At the end, add the following:

(b) EFFECTIVE DATE.—The amendment made by this section applies to sales of agricultural commodities made on or after October 28, 2000.

**SA 553.** Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify ter-

rorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 11 and insert the following:

DEPARTMENT OF DEFENSE—CIVIL  
OPERATIONS AND MAINTENANCE

(a) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency repair of the Fern Ridge Dam, Oregon, \$31,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency work on the Los Angeles-Long Beach Harbor, Mojave River Dam, Port San Luis, and Santa Barbara Harbor, \$7,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(c) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for emergency construction at Lower Santa Ana River Reaches 1 and 2 of the Santa Ana River Project, Prado Dam of the Santa Ana River Project, San Timoteo of the Santa Ana River Project, Murrieta Creek, and Santa Paula Creek, \$12,500,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(d) The project for navigation, Los Angeles Harbor, California, authorized by section 101(b)(5) of the Water Resources Development Act of 2000 (114 Stat. 2577) is modified to authorize the Secretary of the Army to carry out the project at a total cost of \$222,000,000.

(e) The Secretary of the Army, acting through the Chief of Engineers, shall use any funds appropriated to the Secretary pursuant to this Act to repair, restore, and maintain projects and facilities of the Corps of Engineers, including by dredging navigation channels, cleaning area streams, providing emergency streambank protection, restoring such public infrastructure as the Secretary determines to be necessary (including sewer and water facilities), conducting studies of the impacts of floods, and providing such flood relief as the Secretary determines to be appropriate: *Provided*, That of those funds, \$32,000,000 shall be used by the Secretary for the Upper Peninsula, Michigan.

**SA 554.** Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 376 submitted by Mr. WYDEN (for himself, Mr. SMITH, and Mrs. MURRAY) and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmis-

sibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, strike lines 1 through 11 and insert the following:

DEPARTMENT OF DEFENSE—CIVIL  
CORPS OF ENGINEERS

(a) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for general construction, \$13,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(b) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for operations and maintenance, \$163,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

(c) For an additional amount for the Secretary of the Army, acting through the Chief of Engineers, for the Mississippi River and its tributaries, \$15,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of the conference report to accompany S. Con. Res. 95 (108th Congress).

**SA 555.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 387 proposed by Ms. MIKULSKI (for herself, Mr. ALLEN, Mr. LEAHY, Mr. CORZINE, Mr. WARNER, Mr. JEFFORDS, Mr. SARBANES, Mr. DAYTON, Mr. KENNEDY, Ms. LANDRIEU, Mr. REED, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. DORGAN, Mr. KERRY, Mr. CONRAD, Mr. THOMAS, Mr. STEVENS, Mr. DEWINE, Mr. COLEMAN, Ms. SNOWE, and Ms. COLLINS) to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 2, strike lines 5 through 11, and insert the following:

“(9)(A) Subject to subparagraphs (B) and (C), an alien counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.

“(B) A petition referred to in subparagraph (A) shall include, with respect to an alien—

“(i) the full name of the alien; and

“(ii) a certification to the Department of Homeland Security that the alien is a returning worker.

“(C) An H-2B visa for a returning worker shall be approved only if the name of the individual on the petition is confirmed by—

“(i) the Department of State; or

“(ii) if the alien is visa exempt, the Department of Homeland Security.”.

**SA 556.** Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

(e) REQUIREMENTS REGARDING ELECTIONS OF MEMBERS TO REDUCE OR DECLINE INSURANCE.—Section 1967(a) of such title is further amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

“(C) Pursuant to regulations prescribed by the Secretary of Defense, notice of an election of a member not to be insured under this subchapter, or to be insured under this subchapter in an amount less than the maximum amount provided under paragraph (3)(A)(i)(I), shall be provided to the spouse of the member.”; and

(2) in paragraph (3)—

(A) in the matter preceding clause (i), by striking “and (C)” and inserting “, (C), and (D)”;

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

“(D) A member with a spouse may not elect not to be insured under this subchapter, or to be insured under this subchapter in an amount less than the maximum amount provided under subparagraph (A)(i)(I), without the written consent of the spouse.”.

(f) REQUIREMENT REGARDING REDESIGNATION OF BENEFICIARIES.—Section 1970 of such title is amended by adding at the end the following new subsection:

“(j) A member with a spouse may not modify the beneficiary or beneficiaries designated by the member under subsection (a) without providing written notice of such modification to the spouse.”.

**SA 557.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 530 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 6023. (a) Not later than January 31, 2006, the Comptroller General of the United States and the Chief Counsel for Advocacy of

the Small Business Administration shall each conduct a study, in consultation with each other and with the Administrator of the Small Business Administration and the Secretary of Energy, regarding the feasibility of—

(1) changing the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, for the purpose of rendering such prime contractors agents of the Department of Energy in accordance with the standards established in *U.S. West Communications Services, Inc. v. United States*, 940 F.2d 622 (Fed. Cir. 1991) and related judicial precedent;

(2) instituting adequate policies, regulations, procedures, and practices to ensure that prime contractors, which are other than small business concerns and which have entered into the management and operating contracts and other similar facilities management contracts with the Department of Energy, treat small businesses seeking to do business with the Department of Energy through such prime contractors according to the “federal norm”, as recognized by the Comptroller General of the United States;

(3) recognizing subcontracts awarded by the prime contractors, which have entered into the management and operating contracts and other similar facilities management contracts proposed to be changed based on the findings under paragraph (1), as prime contracts for all purposes;

(4) instituting policies, regulations, procedures, and practices adequate to ensure that small business contracts awarded by the prime contractors acting as agents for the Department of Energy under the standards described in paragraphs (1) and (2) are treated as Federal prime contracts for all purposes; and

(5) ensuring that the Department of Energy's prime contractors can simultaneously continue to award, and small businesses can simultaneously continue to receive, subcontracts not subject to treatment or recognition as prime contracts.

(b) The Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration, in conducting their respective studies under subsection (a) shall consider the impact of—

(1) the changes studied on accountability, integrity, competition, and sound management practices at the Department of Energy and its facilities managed by prime contractors; and

(2) the agency relationship between the Department of Energy and some of its prime contractors on the ability of small businesses to compete for government business.

(c) The Comptroller General and the Chief Counsel for Advocacy of the Small Business Administration shall separately report their findings to—

(1) the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, and the Committee on Small Business and Entrepreneurship of the Senate; and

(2) the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Small Business of the House of Representatives.

(d) The Secretary of Energy may, until January 31, 2006—

(1) make changes to contracts, including the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, consistent with those changes being studied under subsection (a); and

(2) implement policies, regulations, procedures, and practices consistent with those being studied under subsection (a).

**SA 558.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 529 submitted by Mr. DOMENICI and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 6023. (a) Not later than January 31, 2006, the Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration shall each conduct a study, in consultation with each other and with the Administrator of the Small Business Administration and the Secretary of Energy, regarding the feasibility of—

(1) changing the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, for the purpose of rendering such prime contractors agents of the Department of Energy in accordance with the standards established in *U.S. West Communications Services, Inc. v. United States*, 940 F.2d 622 (Fed. Cir. 1991) and related judicial precedent;

(2) instituting adequate policies, regulations, procedures, and practices to ensure that prime contractors, which are other than small business concerns and which have entered into the management and operating contracts and other similar facilities management contracts with the Department of Energy, treat small businesses seeking to do business with the Department of Energy through such prime contractors according to the “federal norm”, as recognized by the Comptroller General of the United States;

(3) recognizing subcontracts awarded by the prime contractors, which have entered into the management and operating contracts and other similar facilities management contracts proposed to be changed based on the findings under paragraph (1), as prime contracts for all purposes;

(4) instituting policies, regulations, procedures, and practices adequate to ensure that small business contracts awarded by the prime contractors acting as agents for the Department of Energy under the standards described in paragraphs (1) and (2) are treated as Federal prime contracts for all purposes; and

(5) ensuring that the Department of Energy's prime contractors can simultaneously continue to award, and small businesses can simultaneously continue to receive, subcontracts not subject to treatment or recognition as prime contracts.

(b) The Comptroller General of the United States and the Chief Counsel for Advocacy of the Small Business Administration, in conducting their respective studies under subsection (a) shall consider the impact of—

(1) the changes studied on accountability, integrity, competition, and sound management practices at the Department of Energy and its facilities managed by prime contractors; and

(2) the agency relationship between the Department of Energy and some of its prime contractors on the ability of small businesses to compete for government business.

(c) The Comptroller General and the Chief Counsel for Advocacy of the Small Business Administration shall separately report their findings to—

(1) the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, and the Committee on Small Business and Entrepreneurship of the Senate; and

(2) the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Small Business of the House of Representatives.

(d) The Secretary of Energy may, until January 31, 2006—

(1) make changes to contracts, including the management and operating contracts and other similar facilities management contracts between the Department of Energy and its prime contractors, which are other than small business concerns, consistent with those changes being studied under subsection (a); and

(2) implement policies, regulations, procedures, and practices consistent with those being studied under subsection (a).

**SA 559.** Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 437 submitted by Mr. ROCKEFELLER and intended to be proposed to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; which was ordered to lie on the table; as follows:

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

#### SENSE OF SENATE

SEC. \_\_\_\_\_. (a) FINDINGS.—The Senate makes the following findings:

(1) On September 11, 2001, terrorists hijacked and destroyed four civilian aircraft, crashing two of them into the towers of the World Trade Center in New York, New York, and a third into the Pentagon outside Washington, District of Columbia.

(2) The valor of the passengers and crew on the fourth aircraft prevented it from also being used as a weapon against the United States.

(3) The September 11, 2001, attacks stand as the deadliest terrorist attacks ever perpetrated against the United States.

(4) By targeting symbols of American strength and success, the attacks clearly were intended to assail the principles, values, and freedoms of the United States and the American people, to intimidate the Nation, and to weaken the national resolve.

(5) On September 14, 2001, Congress, in Public Law 107-40, authorized the use of "all necessary and appropriate force" against those responsible for the terrorist attacks.

(6) The Armed Forces subsequently moved swiftly against Al Qaeda and the Taliban re-

gime in Afghanistan, whom the President and Congress had identified as enemies of the United States.

(7) In doing so, brave servicemembers and intelligence officers left family and friends in order to defend the Nation.

(8) More than three years later, many servicemembers and intelligence officers remain abroad, shielding the Nation from further terrorist attacks.

(9) Terrorists continue to attack United States servicemembers and continue to plan attacks against the United States and its interests.

(10) Terrorists continue to target civilians and military personnel alike through such insidious and cowardly methods as kidnappings and bombings.

(11) Intelligence information derived from the interrogation of captured terrorists is essential to the protection of servicemembers deployed around world, to the protection of the homeland, and to the protection of United States interests.

(12) It is the policy of the President and Congress that the interrogation of terrorists conform to the Constitution, laws, and treaty obligations of the United States.

(13) In those rare instances in which individuals have been alleged to have violated the Constitution, laws, or treaty obligations of the United States during the course of an interrogation, the departments and agencies of the United States Government, and the inspectors general of each department or agency concerned, have investigated allegations of such violations.

(14) In the few cases in which officers of the United States intelligence community are determined to have actually violated the Constitution, laws, or treaty obligations of the United States, such officers have been, or should be, punished.

(15) The Select Committee on Intelligence of the Senate was established, among other things, to provide vigorous legislative oversight of the intelligence activities of the United States in order to assure that such activities conform to the Constitution, laws, and treaty obligations of the United States.

(16) The Select Committee on Intelligence of the Senate was deliberately structured with a unified staff under the joint supervision of the Chairman and the Vice Chairman of the Select Committee through a single staff director in order to avoid, to the maximum extent possible, the politicization of oversight of the intelligence activities of the United States. Because of its unique structure and rules, as currently written, the Select Committee is ideally suited to continue oversight of United States interrogation, detention, and rendition operations.

(17) The Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate have directed the staff of the Select Committee to continue to exercise the oversight authority of the Select Committee to ensure that intelligence activities of the United States relating to the detention, interrogation, and rendition of terrorists conform to the Constitution, laws, and treaty obligations of the United States.

(18) As part of its ongoing review, the staff of the Select Committee on Intelligence of the Senate have interviewed individuals and reviewed documents relating to the detention, interrogation, and rendition of terrorists, and have inspected United States detention and interrogation operations and facilities in Guantanamo Bay, Cuba.

(19) The staff of the Select Committee on Intelligence of the Senate continue to interview individuals, receive information, and review documents relating to the detention, interrogation, and rendition of terrorists.

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

(1) to recognize that terrorists continue to seek to attack the United States at home and the interests of the United States abroad;

(2) to stand with the people of the United States in great debt to the members of the Armed Forces and officers of the United States intelligence community serving at home and abroad;

(3) to remain resolved to pursue all those responsible for the terrorist attacks of September 11, 2001, and their sponsors, until they are discovered and punished; and

(4) to reaffirm that Congress will—

(A) honor the memory of those who lost their lives as a result of the September 11, 2001, terrorist attacks; and

(B) bravely defend the citizens of the United States in the face of all future challenges.

**SA 560.** Mr. COCHRAN (for Mr. SHELBY (for himself, Mr. KENNEDY, Mr. DURBIN, and Mr. OBAMA)) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

On page 184, line 16, after "\$11,935,000," insert "for increased judicial security outside of courthouse facilities, including priority consideration of home intrusion detection systems in the homes of federal judges,".

**SA 561.** Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

In section 6017(b)(1)(A), insert "appurtenant to the land" after "water".

**SA 562.** Mr. COCHRAN (for Mr. REID) proposed an amendment to the bill H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes; as follows:

In section 6017(c)(2), strike subparagraphs (A) and (B) and insert the following:

(A) acquired only from willing sellers;

(B) designed to maximize water conveyances to Walker Lake; and



(C) located only within the Walker River Paiute Indian Reservation.

## NOTICES OF HEARINGS/MEETINGS

### PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations will hold a hearing entitled "The Container Security Initiative and the Customs-Trade Partnership Against Terrorism: Securing the Global Supply Chain or Trojan Horse?" In light of the September 11, 2001, terrorist attacks, concern has increased that terrorists could smuggle weapons of mass destruction in the approximately 9 million ocean going containers that arrive in the United States every year. As part of its overall response to the threat of terrorism, the Department of Homeland Security's Bureau of Customs and Border Protection (Customs) implemented the Container Security Initiative (CSI) to screen high-risk containers at sea ports overseas, thus employing screening tools before potentially dangerous cargoes reach our shores. Customs also implemented the Customs Trade Partnership Against Terrorism (C-TPAT) to improve the security of the global supply chain in partnership with the private sector.

Both CSI and C-TPAT face a number of compelling challenges that impact their ability to safeguard our Nation from terrorism. The Subcommittee's April 26 hearing will examine how Customs utilizes CSI and C-TPAT in connection with its other enforcement programs and review the requirements for and challenges involved in transitioning CSI and C-TPAT from promising risk management concepts to effective and sustained enforcement operations. These important Customs initiatives required sustained Congressional oversight. As such, this will be the first of several hearings the Subcommittee intends to hold on the response of the Federal Government to terrorist threats.

The Subcommittee hearing is scheduled for Tuesday, April 26, 2005, at 9:30 a.m. in Room 562 of the Dirksen Senate Office Building. For further information, please contact Raymond V. Shepherd, III, Staff Director and Chief Counsel to the Permanent Subcommittee on Investigations, at 224-3721.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON ARMED SERVICES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on April 19, 2005, at 9:30 a.m., in open session to consider the following nominations: (1) Honorable Gordon R. England to be Deputy Secretary of Defense; and (2) Admiral Michael G.

Mullen, USN, for reappointment to the grade of Admiral and to be Chief of Naval Operations.

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

### COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on April 19, 2005, at 3 p.m., to conduct a hearing on "Proposals for Improving the Regulation of the Housing Government Sponsored Enterprises."

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

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, April 19, at 10 a.m. in room SD-366.

The purpose of this hearing is to receive testimony concerning offshore hydrocarbon production and the future of alternate energy resources on the Outer Continental Shelf. Issues to be discussed include: recent technological advancements made in the offshore exploration and production of traditional forms of energy, and the future of deep shelf and deepwater production. Enhancements in worker safety, and steps taken by the offshore oil and gas industry to meet environmental challenges. Participants in the hearing will also address ways that the Federal Government can facilitate increased exploration and production offshore while protecting the environment. New approaches to help diversify the offshore energy mix will also be discussed.

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

### COMMITTEE ON FINANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on Tuesday, April 19, 2005, at 10 a.m., to consider an original bill entitled, "Highway Reauthorization and Excise Tax Simplification Act of 2005" and, S. 661, "the United States Tax Court Modernization Act".

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

### COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Tuesday, April 19, 2005 at 10 a.m. in SD-430.

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

### COMMITTEE ON VETERANS' AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the

Senate on Tuesday, April 19, 2005, to mark up the nomination of Mr. Jonathan B. Perlin to be Under Secretary for Health, Department of Veterans' Affairs; and to hold a Committee hearing titled "Back from the Battlefield, Part II: Seamless Transition to Civilian Life."

The meeting will take place in room 418 of the Russell Senate Office Building at 10:15 a.m.

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

### SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 19, 2005 at 2:30 p.m. to hold a hearing.

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

## AUTHORITY FOR COMMITTEES TO MEET

### SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Competition Policy, and Consumer Rights be authorized to meet on Tuesday, April 19, 2005 to conduct a hearing on "SBC/ATT and Verizon/MCI Mergers: Remaking the Telecommunications Industry, Part II—Another View", at 2:30 p.m. in Room 226 of the Dirksen Senate Office Building.

Witness List: Mr. Carl Grivner, CEO, XO Communications, Reston, VA.; Mr. Jeffrey Citron, CEO, Vonage, Edison, NJ.; Mr. Scott Cleland, CEO, Precursor Group, Washington, DC; and Mr. Gene Kimmelman, Director, Washington, DC. Office, Consumers Union, Washington, DC.

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

### SUBCOMMITTEE ON SEAPOWER

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Seapower be authorized to meet during the session of the Senate on April 19, 2005, at 3 p.m., in open session to receive testimony on United States Marine Corps Ground and Rotary Wing Program and Seabasing, in review of the defense authorization request for fiscal year 2006.

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

### SUBCOMMITTEE ON WATER AND POWER

Mr. FRIST. Mr. President, I ask unanimous consent that the subcommittee on Water and Power be authorized to meet during the session of the Senate on Tuesday, April 19 a 2:30 p.m.

The purpose of the hearing is to receive testimony on S. 166, to amend the Oregon Resource Conservation Act of