

resources by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. LINCOLN (for herself, Ms. COLLINS, Mr. CASEY, Mr. BAYH, Mr. JOHNSON, Ms. LANDRIEU, Mr. ROCKEFELLER, Ms. SNOWE, Mr. KERRY, and Ms. STABENOW):

S. 410. A bill to amend part E of title IV of the Social Security Act to ensure States follow best policies and practices for supporting and retaining foster parents and to require the Secretary of Health and Human Services to award grants to States to improve the empowerment, leadership, support, training, recruitment, and retention of foster care, kinship care, and adoptive parents; to the Committee on Finance.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 411. A bill to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the City of St. George, Utah for airport purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INHOFE:

S. 412. A bill to establish the Federal Emergency Management Agency as an independent agency, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BURR (for himself and Mr. BINGAMAN):

S. 413. A bill to establish a grant program to improve high school graduation rates and prepare students for college and work; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DODD (for himself, Mr. LEVIN, Mr. MENENDEZ, Mr. REED, Mr. AKAKA, Mr. SCHUMER, Mr. TESTER, Mr. BROWN, Mr. MERKLEY, Mr. KERRY, Mr. LEAHY, Mr. DURBIN, Mr. HARKIN, Mrs. MCCASKILL, Mr. WHITEHOUSE, and Mr. CASEY):

S. 414. A bill to amend the Consumer Credit Protection Act, to ban abusive credit practices, enhance consumer disclosures, protect underage consumers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BROWN:

S. 415. A bill for the relief of Maha Dakar; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN, Mr. CARDIN, Mr. CASEY, Mr. DURBIN, Mr. FEINGOLD, Mr. KENNEDY, Ms. MIKULSKI, Mr. MENENDEZ, Mr. MERKLEY, Mr. SANDERS, Ms. STABENOW, and Mr. WHITEHOUSE):

S. 416. A bill to limit the use of cluster munitions; to the Committee on Foreign Relations.

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. FEINGOLD, Mr. WHITEHOUSE, and Mrs. MCCASKILL):

S. 417. A bill to enact a safe, fair, and responsible state secrets privilege Act; to the Committee on the Judiciary.

By Ms. KLOBUCHAR (for herself and Mr. HATCH):

S. 418. A bill to require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes; to the Committee on Commerce, Science, and Transportation.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BINGAMAN:

S. Res. 31. An original resolution authorizing expenditures by the Committee on Energy and Natural Resources; from the Committee on Energy and Natural Resources; to the Committee on Rules and Administration.

By Mr. LIEBERMAN:

S. Res. 32. An original resolution authorizing expenditures by the Committee on Homeland Security and Governmental Affairs; from the Committee on Homeland Security and Governmental Affairs; to the Committee on Rules and Administration.

By Mr. AKAKA:

S. Res. 33. An original resolution authorizing expenditures by the Committee on Veterans' Affairs; from the Committee on Veterans' Affairs; to the Committee on Rules and Administration.

By Mrs. FEINSTEIN:

S. Res. 34. An original resolution authorizing expenditures by the Select Committee on Intelligence; from the Select Committee on Intelligence; to the Committee on Rules and Administration.

By Mr. VOINOVICH (for himself and Mr. BROWN):

S. Res. 35. A resolution honoring Miami University for its 200 years of commitment to public higher education; considered and agreed to.

By Mr. REID (for Mr. KENNEDY):

S. Res. 36. An original resolution authorizing expenditures by the Committee on Health, Education, Labor, and Pensions; from the Committee on Health, Education, Labor, and Pensions; to the Committee on Rules and Administration.

By Mr. LAUTENBERG:

S. Res. 37. A bill calling on officials of the Government of Brazil and the federal courts of Brazil to comply with the requirements of the Convention on the Civil Aspects of International Child Abduction and to assist in the safe return of Sean Goldman to his father, David Goldman; to the Committee on Foreign Relations.

By Ms. STABENOW (for herself, Ms. MIKULSKI, Mrs. MURRAY, and Mr. SANDERS):

S. Con. Res. 6. A concurrent resolution expressing the sense of Congress that national health care reform should ensure that the health care needs of women and of all individuals in the United States are met; to the Committee on Health, Education, Labor, and Pensions.

## ADDITIONAL COSPONSORS

S. 34

At the request of Mr. DEMINT, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 34, a bill to prevent the Federal Communications Commission from repromulgating the fairness doctrine.

S. 160

At the request of Mr. LIEBERMAN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. 160, a bill to provide the District of Columbia a voting seat and the State of Utah an additional seat in the House of Representatives.

S. 211

At the request of Mrs. MURRAY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human services and volunteer services, and for other purposes.

S. 298

At the request of Mr. ISAKSON, the names of the Senator from Florida (Mr. NELSON) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 298, a bill to establish a Financial Markets Commission, and for other purposes.

S. 331

At the request of Mr. SCHUMER, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 331, a bill to increase the number of Federal law enforcement officials investigating and prosecuting financial fraud.

S. 371

At the request of Mr. THUNE, the names of the Senator from Oklahoma (Mr. INHOFE), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 371, a bill to amend chapter 44 of title 18, United States Code, to allow citizens who have concealed carry permits from the State in which they reside to carry concealed firearms in another State that grants concealed carry permits, if the individual complies with the laws of the State.

S. 374

At the request of Mr. DEMINT, the names of the Senator from Kansas (Mr. BROWNBACK), the Senator from Oklahoma (Mr. COBURN), the Senator from Idaho (Mr. CRAPO) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. 374, a bill to amend the Consumer Product Safety Act to provide regulatory relief to small and family-owned businesses.

S. 405

At the request of Mr. LEAHY, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 405, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S.J. RES. 1

At the request of Mr. VITTER, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States relative to limiting the number of terms that a Member of Congress may serve.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL (for himself and Mr. MCCAIN):

S. 409. A bill to secure Federal ownership and management of significant natural, scenic, and recreational resources, to provide for the protection of cultural resources, to facilitate the efficient extraction of mineral resources by authorizing and directing an

exchange of Federal and non-Federal land, and for other purposes; to the Committee on Energy and Natural Resources.

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

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

S. 409

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Southeast Arizona Land Exchange and Conservation Act of 2009”.

#### SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to authorize, direct, facilitate, and expedite the conveyance and exchange of land between the United States and Resolution Copper;

(2) to provide for the permanent protection of cultural resources and uses of the Apache Leap escarpment located near the town of Superior, Arizona; and

(3) to secure Federal ownership and protection of land with significant natural, scenic, recreational, water, riparian, cultural and other resources.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) **APACHE LEAP.**—The term “Apache Leap” means the approximately 822 acres of land (including the approximately 110 acres of land of Resolution Copper described in section 4(c)(1)(G)), as depicted on the map entitled “Apache Leap” and dated January 2009.

(2) **FEDERAL LAND.**—The term “Federal land” means the approximately 2,406 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Federal Parcel–Oak Flat” and dated January 2009.

(3) **NON-FEDERAL LAND.**—The term “non-Federal land” means each parcel of land described in section 4(c).

(4) **OAK FLAT CAMPGROUND.**—The term “Oak Flat Campground” means the campground that is—

(A) comprised of approximately 16 developed campsites and adjacent acreage at a total of approximately 50 acres; and

(B) depicted on the map entitled “Oak Flat Campground” and dated January 2009.

(5) **OAK FLAT WITHDRAWAL AREA.**—The term “Oak Flat Withdrawal Area” means the approximately 760 acres of land depicted on the map entitled “Oak Flat Withdrawal Area” and dated January 2009.

(6) **RESOLUTION COPPER.**—The term “Resolution Copper” means—

(A) Resolution Copper Mining, LLC, a Delaware limited liability company; and

(B) any successor, assign, affiliate, member, or joint venturer of Resolution Copper Mining, LLC.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(8) **SECRETARY CONCERNED.**—The term “Secretary concerned” means the Secretary of Agriculture or the Secretary of the Interior, as applicable.

(9) **TOWN.**—The term “Town” means the Town of Superior, Arizona, an incorporated municipality.

#### SEC. 4. LAND CONVEYANCES AND EXCHANGES.

(a) **PURPOSES.**—The purposes of the land conveyances and exchanges under this section are—

(1) to secure Federal ownership and protection of significant natural, scenic, and recreational resources; and

(2) to facilitate efficient extraction of mineral resources.

(b) **OFFER BY RESOLUTION COPPER.**—

(1) **IN GENERAL.**—Subject to section 9(b)(1), if Resolution Copper submits to the Secretary of Agriculture a written offer, in accordance with paragraph (2), to convey to the United States all right, title, and interest of Resolution Copper in and to the non-Federal land, the Secretary shall—

(A) accept the offer; and

(B) convey to Resolution Copper all right, title, and interest of the United States in and to the Federal land, subject to—

(i) section 10(c); and

(ii) any valid existing right or title reservation, easement, or other exception required by law or agreed to by the Secretary concerned and Resolution Copper.

(2) **REQUIREMENTS.**—Title to any non-Federal land conveyed by Resolution Copper to the United States under paragraph (1) shall—

(A) be in a form that is acceptable to the Secretary concerned; and

(B) conform to the title approval standards of the Attorney General of the United States applicable to land acquisitions by the Federal Government.

(c) **RESOLUTION COPPER LAND EXCHANGE.**—On receipt of title to the Federal land under subsection (b)(1)(B), Resolution Copper shall simultaneously convey—

(1) to the Secretary of Agriculture, all right, title, and interest that the Secretary determines to be acceptable in and to—

(A) the approximately 147 acres of land located in Gila County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Turkey Creek” and dated January 2009;

(B) the approximately 148 acres of land located in Yavapai County Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Tangle Creek” and dated January 2009;

(C) the approximately 149 acres of land located in Maricopa County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Cave Creek” and dated January 2009;

(D) the approximately 88 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–J-I Ranch” and dated January 2009;

(E) the approximately 640 acres of land located in Coconino County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–East Clear Creek” and dated January 2009;

(F) the approximately 95 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–The Pond” and dated January 2009; and

(G) subject to the retained rights under subsection (d)(2), the approximately 110 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Apache Leap South End” and dated January 2009; and

(2) to the Secretary of the Interior, all right, title, and interest that the Secretary of the Interior determines to be acceptable in and to—

(A) the approximately 3,073 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona

Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Lower San Pedro River” and dated January 2009;

(B) the approximately 160 acres of land located in Gila and Pinal Counties, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Dripping Springs” and dated January 2009; and

(C) the approximately 956 acres of land located in Santa Cruz County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Non-Federal Parcel–Appleton Ranch” and dated January 2009.

(d) **ADDITIONAL CONSIDERATION TO UNITED STATES.**—

(1) **SURRENDER OF RIGHTS.**—Subject to paragraph (2), in addition to the non-Federal land to be conveyed to the United States under subsection (c), and as a condition of the land exchange under this section, Resolution Copper shall surrender to the United States, without compensation, the rights held by Resolution Copper under mining and other laws of the United States—

(A) to commercially extract minerals under—

(i) Apache Leap; or

(ii) the parcel identified in subsection (c)(1)(F); and

(B) to disturb the surface of Apache Leap, except with respect to such fences, signs, monitoring wells, and other devices, instruments, or improvements as are necessary to monitor the public health and safety or achieve other appropriate administrative purposes, as determined by the Secretary, in consultation with Resolution Copper.

(2) **EXPLORATION ACTIVITIES.**—Nothing in this Act prohibits Resolution Copper from using any existing mining claim held by Resolution Copper on Apache Leap, or from retaining any right held by Resolution Copper to the parcel described in subsection (c)(1)(G), to carry out any underground activities under Apache Leap in a manner that the Secretary determines will not adversely impact the surface of Apache Leap (including drilling or locating any tunnels, shafts, or other facilities relating to mining, monitoring, or collecting geological or hydrological information) that do not involve commercial mineral extraction under Apache Leap.

(e) **USE OF EQUALIZATION PAYMENT.**—

(1) **PAYMENT.**—Resolution Copper shall pay into the Federal Land Disposal Account established by section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)) (or any successor account) any cash equalization funds owed by Resolution Copper to the United States under section 7(b)(1), to remain available until expended, without further appropriation, to the Secretary and the Secretary of the Interior, as the Secretaries jointly determine to be appropriate, for—

(A) the acquisition from willing sellers of land or interests in land within the hydrographic boundary of the San Pedro River and tributaries in the State of Arizona; and

(B) the management and protection of endangered species and other sensitive environmental values and land within the San Pedro Riparian National Conservation Area established by section 101(a) of the Arizona-Idaho Conservation Act of 1988 (16 U.S.C. 460xx(a)) (including any additions to the area), including management under any cooperative management agreement entered into by the Secretary of the Interior and a State or local agency under section 103(c) of that Act (16 U.S.C. 460xx–2(c)).

(2) **PERIOD OF USE.**—To the maximum extent feasible, the amount paid into the Federal Land Disposal Account by Resolution Copper under paragraph (1) shall be used by

the Secretary and the Secretary of the Interior during the 2-year period beginning on the date of payment.

(3) **COOPERATIVE MANAGEMENT AGREEMENTS.**—The Secretary of the Interior may enter into such cooperative management agreements with qualified organizations (as defined in section 170(h) of the Internal Revenue Code of 1986) as the Secretary of the Interior determines to be appropriate to administer portions of the San Pedro Riparian National Conservation Area.

#### SEC. 5. TIMING AND PROCESSING OF EXCHANGE.

(a) **SENSE OF CONGRESS REGARDING TIMING OF EXCHANGE.**—It is the sense of Congress that the land exchange directed by section 4 should be consummated by not later than 1 year after the date of enactment of this Act.

(b) **EXCHANGE PROCESSING.**—Before the date of consummation of the exchange under section 4, the Secretary concerned shall complete any necessary land surveys and required preexchange clearances, reviews, mitigation activities, and approvals relating to—

- (1) threatened or endangered species;
- (2) cultural or historic resources;
- (3) wetland or floodplains; or
- (4) hazardous materials.

(c) **POST-EXCHANGE PROCESSING.**—Before commencing production in commercial quantities of any valuable mineral from the Federal land conveyed to Resolution Copper under section 4(b)(1)(B) (except for any such production from any exploration and mine development shafts, adits, and tunnels needed to determine feasibility and pilot plant testing of commercial production or to access the ore body and tailings deposition areas), the Secretary shall publish an environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C)) regarding any Federal agency action carried out relating to the commercial production, including an analysis of the impacts of the production.

(d) **OAK FLAT WITHDRAWAL AREA RESTRICTION.**—

(1) **MINERAL EXPLORATION.**—To ensure the collection and consideration of adequate information to analyze possible commercial production of minerals by Resolution Copper from the Oak Flat Withdrawal Area, notwithstanding any other provision of law, Resolution Copper may carry out mineral exploration activities under the Oak Flat Withdrawal Area during the period beginning on the date of enactment of this Act and ending on the date of conveyance of the Oak Flat Withdrawal Area to Resolution Copper under section 4(b)(1)(B) by directional drilling or any other method that will not disturb the surface of the land.

(2) **SENSE OF CONGRESS REGARDING PERMIT.**—It is the sense of Congress that the Secretary should issue to Resolution Copper a permit to conduct appropriate directional drilling or other nonsurface-disturbing exploration in the Oak Flat Withdrawal Area as soon as practicable after the date of enactment of this Act.

(e) **EXCHANGE AND POST-EXCHANGE COSTS.**—In accordance with sections 254.4 and 254.7 of title 36, Code of Federal Regulations (or successor regulations), Resolution Copper shall assume responsibility for—

(1) hiring such contractors as are necessary for carrying out any exchange or conveyance of land under this Act; and

(2) paying, without compensation under section 254.7 of title 36, Code of Federal Regulations (or a successor regulation)—

(A) the costs of any appraisal relating to an exchange or conveyance under this Act, including any reasonable reimbursements to the Secretary on request of the Secretary for

the cost of reviewing and approving an appraisal;

(B) the costs of any clearances, reviews, mitigation activities, and approvals under subsection (b), including any necessary land surveys conducted by the Bureau of Land Management Cadastral Survey program;

(C) the costs of achieving compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) under subsection (c); and

(D) any other cost agreed to by Resolution Copper and the Secretary concerned.

(f) **CONTRACTOR WORK AND APPROVALS.**—

(1) **IN GENERAL.**—Any work relating to the exchange or conveyance of land under this Act that is performed by a contractor shall be subject to the mutual agreement of the Secretary concerned and Resolution Copper, including any agreement with respect to—

(A) the selection of the contractor; and

(B) the scope of work performed by the contractor.

(2) **REVIEW AND APPROVAL.**—Any required review and approval of work by a contractor shall be performed by the Secretary concerned, in accordance with applicable law (including regulations).

(3) **LEAD ACTOR AGREEMENT.**—The Secretary of Agriculture and the Secretary of the Interior may mutually agree to designate the Secretary of Agriculture as the lead actor for any action under this subsection.

#### SEC. 6. CONVEYANCE OF LAND TO TOWN.

(a) **CONVEYANCE REQUIREMENTS.**—

(1) **IN GENERAL.**—On receipt of a request from the Town described in paragraph (2), the Secretary shall convey to the Town each parcel requested.

(2) **DESCRIPTION OF REQUEST.**—A request referred to in paragraph (1) is a request by the Town—

(A) for the conveyance of 1 or more of the parcels identified in subsection (b); and

(B) that is submitted to the Secretary by not later than 90 days after the date of consummation of the land exchange under section 4.

(3) **PRICE.**—The Town shall pay to the Secretary a price equal to the market value of any land conveyed under this subsection, as appraised under section 7, less the amount of any credit under section 7(b)(3).

(b) **IDENTIFICATION OF PARCELS.**—The Town may request conveyance of any of—

(1) the approximately 30 acres of land located in Pinal County, Arizona, occupied on the date of enactment of this Act by the Fairview Cemetery and depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Federal Parcel–Fairview Cemetery” and dated January 2009;

(2) the reversionary interest, and any reserved mineral interest, of the United States in the approximately 265 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Federal Reversionary Interest–Superior Airport” and dated January 2009; and

(3) all or any portion of the approximately 250 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Federal Parcel–Superior Airport Contiguous Parcels” and dated January 2009.

(c) **CONDITION OF CONVEYANCE.**—A conveyance of land under this section shall be carried out in a manner that provides the United States manageable boundaries on any parcel retained by the Secretary, to the maximum extent practicable.

#### SEC. 7. VALUATION OF LAND EXCHANGED OR CONVEYED.

(a) **EXCHANGE VALUATION.**—

(1) **IN GENERAL.**—The value of the land to be exchanged under section 4 or conveyed to the Town under section 6 shall be determined by the Secretary through concurrent appraisals conducted in accordance with paragraph (2).

(2) **APPRAISALS.**—

(A) **IN GENERAL.**—An appraisal under this section shall be—

(i) performed by an appraiser mutually agreed to by the Secretary and Resolution Copper;

(ii) performed in accordance with—

(I) the Uniform Appraisal Standards for Federal Land Acquisitions (Department of Justice, 5th Edition, December 20, 2000);

(II) the Uniform Standards of Professional Appraisal Practice; and

(III) Forest Service appraisal instructions; and

(iii) submitted to the Secretary for review and approval.

(B) **REAPPRAISALS AND UPDATED APPRAISED VALUES.**—After the final appraised value of a parcel is determined and approved under subparagraph (A), the Secretary shall not be required to reappraise or update the final appraised value—

(i) for a period of 3 years after the approval by the Secretary of the final appraised value under subparagraph (A)(iii); or

(ii) at all, in accordance with section 254.14 of title 36, Code of Federal Regulations (or a successor regulation), after an exchange agreement is entered into by Resolution Copper and the Secretary.

(C) **PUBLIC REVIEW.**—Before consummating the land exchange under section 4, the Secretary shall make available for public review a summary of the appraisals of the land to be exchanged.

(3) **FAILURE TO AGREE.**—If the Secretary and Resolution Copper fail to agree on the value of a parcel to be exchanged, the final value of the parcel shall be determined in accordance with section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

(4) **FEDERAL LAND APPRAISAL.**—

(A) **IN GENERAL.**—The Federal land shall be appraised in accordance with the standards and instructions referred to in paragraph (2)(A)(ii) and other applicable requirements of this section.

(B) **TREATMENT AS UNENCUMBERED.**—The value of the Federal land outside the Oak Flat Withdrawal Area shall be determined as if the land is unencumbered by any unpatented mining claims of Resolution Copper.

(C) **EFFECT.**—Nothing in this Act affects the validity of any unpatented mining claim or right of Resolution Copper.

(D) **ADDITIONAL APPRAISAL INFORMATION.**—To provide information necessary to calculate a value adjustment payment for purposes of section 12, the appraiser under this paragraph shall include in the appraisal report a detailed royalty income approach analysis, in accordance with the Uniform Appraisal Standards for Federal Land Acquisition, of the market value of the Federal land, even if the royalty income approach analysis is not the appraisal approach relied on by the appraiser to determine the final market value of the Federal land.

(b) **EQUALIZATION OF VALUE.**—

(1) **SURPLUS OF FEDERAL LAND VALUE.**—

(A) **IN GENERAL.**—If the final appraised value of the Federal land exceeds the value of the non-Federal land involved in the exchange under section 4, Resolution Copper shall make a cash equalization payment into the Federal Land Disposal Account (as provided in subsection (e)) to equalize the values of the Federal land and non-Federal land.

(B) **AMOUNT OF PAYMENT.**—Notwithstanding section 206(b) of the Federal Land Policy and

Management Act of 1976 (43 U.S.C. 1716(b)), the United States may accept a cash equalization payment under subparagraph (A) in an amount that is greater than 25 percent of the value of the Federal land.

(2) **SURPLUS OF NON-FEDERAL LAND VALUE.**—If the final appraised value of the non-Federal land exceeds the value of the Federal land involved in the exchange under section 4—

(A) the United States shall not make a payment to Resolution Copper to equalize the values of the land; and

(B) the surplus value of the non-Federal land shall be considered to be a donation by Resolution Copper to the United States.

(3) **PAYMENT FOR LAND CONVEYED TO TOWN.**—

(A) **IN GENERAL.**—The Town shall pay the Secretary market value for any land acquired by the Town from the Secretary under section 6, as determined by the Secretary through an appraisal conducted in accordance with subsection (a)(2).

(B) **CREDIT.**—If the final appraised value of the non-Federal land exceeds the value of the Federal land in the exchange under section 4, the obligation of the Town to pay the United States under subparagraph (A) shall be reduced by an amount equal to the excess value of the non-Federal land conveyed to the United States.

(4) **DISPOSITION AND USE OF PROCEEDS.**—

(A) **CASH EQUALIZATION PAYMENTS.**—Any cash equalization payment under paragraph (1)(A) shall be deposited, without further appropriation, in the Federal Land Disposal Account for use in accordance with section 4(e).

(B) **PAYMENT FOR LAND CONVEYED TO TOWN.**—Any payment received by the Secretary from the Town under paragraph (3)(A) shall be—

(i) deposited in the fund established under Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a); and

(ii) made available to the Secretary, without further appropriation, for the acquisition of land for addition to the National Forest System in the State of Arizona.

## **SEC. 8. APACHE LEAP PROTECTION AND MANAGEMENT.**

(a) **APACHE LEAP PROTECTION AND MANAGEMENT.**—

(1) **IN GENERAL.**—To permanently protect the cultural, historic, educational, and natural resource values of Apache Leap, effective beginning on the date of enactment of this Act, the Secretary shall—

(A) manage Apache Leap in accordance with the laws (including regulations) applicable to the National Forest System; and

(B) place special emphasis on preserving the natural character of Apache Leap.

(2) **WITHDRAWAL.**—Subject to the valid existing rights of Resolution Copper under section 4(d)(2), effective beginning on the date of enactment of this Act, Apache Leap shall be permanently withdrawn from all forms of entry and appropriation under—

(A) the public land laws (including the mining and mineral leasing laws); and

(B) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

(b) **ADDITIONAL PROTECTIONS, ANALYSIS, AND PLAN.**—

(1) **MANAGEMENT PLAN.**—Not later than 4 years after the date of enactment of this Act, the Secretary, in consultation with the Town, Resolution Copper, the Yavapai and Apache Indian tribes, and other interested members of the public, shall solicit public comment regarding, and initiate implementation of, a management plan for Apache Leap.

(2) **PLANNING CONSIDERATIONS.**—The plan described in paragraph (1) shall examine,

among other matters, whether Apache Leap should be managed to establish—

(A) additional cultural and historical resource protections or measures, including permanent or seasonal closures of any portion of Apache Leap to protect cultural or archeological resources;

(B) additional or alternative public access routes, trails, and trailheads to Apache Leap; or

(C) additional opportunities (including appropriate access) for rock climbing, with special emphasis on improved rock climbing access to Apache Leap from the west.

(c) **MINING ACTIVITIES.**—Nothing in this section imposes any restriction on any exploration or mining activity carried out by Resolution Copper outside of Apache Leap after the date of enactment of this Act.

## **SEC. 9. INCORPORATION, MANAGEMENT, AND STATUS OF ACQUIRED LAND.**

(a) **LAND ACQUIRED BY SECRETARY.**—

(1) **IN GENERAL.**—Land acquired by the Secretary under this Act shall—

(A) become part of the National Forest within which the land is located; and

(B) be administered in accordance with the laws (including regulations) applicable to the National Forest System.

(2) **BOUNDARIES.**—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 et seq.), the boundaries of a National Forest in which land acquired by the Secretary is located shall be deemed to be the boundaries of that forest as in existence on January 1, 1965.

(3) **MANAGEMENT OF J-I RANCH.**—

(A) **IN GENERAL.**—On the date on which the Secretary acquires the J-I Ranch parcel described in section 4(c)(1)(D), the Secretary shall manage the land to allow Yavapai and Apache Indian tribes—

(i) to access the land; and

(ii) to undertake traditional activities relating to the gathering of acorns.

(B) **AUTHORITY OF SECRETARY.**—On receipt of a request from the Yavapai or Apache Indian tribe, the Secretary may temporarily or seasonally close to the public any portion of the J-I Ranch during the period in which the Yavapai or Apache Indian tribe carries out any activity described in subparagraph (A)(ii).

(b) **ROCK CLIMBING.**—

(1) **IN GENERAL.**—Before consummating the land exchange under section 4, Resolution Copper shall pay to the Secretary \$1,250,000.

(2) **USE OF FUNDS.**—The Secretary shall use the amount described in paragraph (1), without further appropriation, to construct or improve road access, turnouts, trails, camping, parking areas, or other facilities to promote and enhance rock climbing, bouldering, and such other outdoor recreational opportunities as the Secretary determines to be appropriate—

(A) in the general area north of Arizona State Highway 60 encompassing the parcel described in section 4(c)(1)(F) and adjacent National Forest land to the north of that parcel (commonly known as the “upper Pond area”); or

(B) in the areas commonly known as “Inconceivables” and “Chill Hill” located in or adjacent to secs. 26, 35, and 36, T. 2 S., R. 12 E., Gila and Salt River Meridian.

(3) **TIMING.**—To the maximum extent practicable, the Secretary shall use the amount described in paragraph (1) during the 2-year period beginning on the date of consummation of the land exchange under section 4.

(4) **THE POND PARCEL WORK.**—

(A) **IN GENERAL.**—To improve rock climbing opportunities in the parcel described in section 4(c)(1)(F) and the upper Pond area, Resolution Copper, in consultation with the Secretary and rock climbing interests, may construct roads or improve road access to,

construct trails, camping, parking areas, or other facilities on, or provide other access to, the Pond parcel described in section 4(c)(1)(F) before the date of the conveyance under section 4(c).

(B) **COSTS.**—Resolution Copper shall pay the cost of any activity carried out under subparagraph (A), in addition to the amount specified in paragraph (1).

(c) **LAND ACQUIRED BY SECRETARY OF INTERIOR.**—

(1) **IN GENERAL.**—Land acquired by the Secretary of the Interior under this Act shall—

(A) become part of the Federal administrative area (including the Las Cienegas National Conservation Area or other national conservation area, if applicable) within which the land is located or to which the land is adjacent; and

(B) be managed in accordance with the laws (including regulations) applicable to the Federal administrative area or national conservation area within which the land is located or to which the land is adjacent.

(2) **LOWER SAN PEDRO RIVER LAND.**—To preserve and enhance the natural character and conservation value of the lower San Pedro River land described in section 4(c)(2)(A), on acquisition of the land by the Secretary of the Interior, the land shall be automatically incorporated in, and administered as part of, the San Pedro Riparian National Conservation Area.

(d) **WITHDRAWAL.**—On acquisition by the United States of any land under this Act, subject to valid existing rights and without further action by the Secretary concerned, the acquired land is permanently withdrawn from all forms of entry and appropriation under—

(1) the public land laws (including the mining and mineral leasing laws); and

(2) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

## **SEC. 10. OAK FLAT CAMPGROUND.**

(a) **REPLACEMENT CAMPGROUNDS.**—

(1) **IN GENERAL.**—Not later than 4 years after the date of enactment of this Act, the Secretary, in consultation with Resolution Copper, the Town, and other interested parties, shall design and construct in the Globe Ranger District of the Tonto National Forest 1 or more replacement campgrounds for the Oak Flat Campground (including appropriate access routes to any replacement campgrounds).

(2) **PUBLIC FACILITIES.**—Any replacement campgrounds under this subsection shall be designed and constructed in a manner that adequately (as determined in the sole discretion of the Secretary) replaces, or improves on, the facilities, functions, and amenities available to the public at the Oak Flat Campground.

(b) **COSTS OF REPLACEMENT.**—Resolution Copper shall pay the actual cost of designing, constructing, and providing access to any replacement campgrounds under this subsection, not to exceed \$1,000,000.

(c) **INTERIM OAK FLAT CAMPGROUND ACCESS.**—The document conveying the Federal land to Resolution Copper under section 4(b) shall specify that—

(1) during the 4-year period beginning on the date of enactment of this Act, the Secretary shall retain title to, operate, and maintain the Oak Flat Campground; and

(2) at the end of that 4-year period—

(A) the withdrawal of the Oak Flat Campground shall be revoked; and

(B) title to the Oak Flat Campground shall be simultaneously conveyed to Resolution Copper.

(d) **BOULDERBLAST COMPETITION.**—During the 5-year period beginning on the date of enactment of this Act, the Secretary, in consultation with Resolution Copper, may issue

not more than 1 special use permit per calendar year to provide public access to the bouldering area on the Federal land for purposes of the annual "BoulderBlast" competition.

**SEC. 11. TRADITIONAL ACORN GATHERING AND RELATED ACTIVITIES IN AND AROUND OAK FLAT CAMPGROUND.**

(a) **SENSE OF CONGRESS REGARDING ACORN GATHERING.**—In addition to the acorn gathering opportunities described in section 9(a)(3)(A)(ii), it is the sense of Congress that, on receipt of a request from the Apache or Yavapai Indian tribe or any other Indian tribe during the 180-day period beginning on the date of conveyance of the Federal land to Resolution Copper under section 4, Resolution Copper should endeavor to negotiate and execute a revocable authorization to each applicable Indian tribe to use an area in and around the Oak Flat Campground for traditional acorn gathering and related activities.

(b) **AREA AND TERMS.**—The precise area and terms of use described in subsection (a)—

(1) shall be agreed to by Resolution Copper and the applicable Indian tribes; and

(2) may be modified or revoked by Resolution Copper if Resolution Copper, in consultation with the Indian tribes, determines that all or a portion of the authorized use area needs to be closed on a temporary or permanent basis—

(A) to protect the health or safety of users; or

(B) to accommodate an exploration or mining plan of Resolution Copper.

**SEC. 12. VALUE ADJUSTMENT PAYMENT TO UNITED STATES.**

(a) **ANNUAL PRODUCTION REPORTING.**—

(1) **IN GENERAL.**—Beginning on February 15 of the first calendar year beginning after the date of commencement of production of valuable locatable minerals in commercial quantities (as defined by applicable Federal laws (including regulations)) from the Federal land conveyed to Resolution Copper under section 4(b), and annually thereafter, Resolution Copper shall file with the Secretary of the Interior a report indicating the quantity of locatable minerals in commercial quantities produced from the Federal land during the preceding calendar year.

(2) **REPORT CONTENTS.**—The reports under paragraph (1) shall comply with all record-keeping and reporting requirements of applicable Federal laws (including regulations) in effect at the time of production relating to the production of valuable locatable minerals in commercial quantities on any federally owned land.

(b) **PAYMENT ON PRODUCTION.**—If the cumulative production of valuable locatable minerals in commercial quantities produced from the Federal land conveyed to Resolution Copper under section 4(b) exceeds the quantity of production of locatable minerals from the Federal land used in the royalty income approach analysis under the Uniform Appraisal Standards for Federal Land Acquisitions prepared under section 7(a)(4)(D), Resolution Copper shall pay to the United States, by not later than March 15 of each applicable calendar year, a value adjustment payment for the quantity of excess production at a rate equal to—

(1) the Federal royalty rate in effect for the production of valuable locatable minerals from federally owned land, if such a rate is enacted before December 31, 2012; or

(2) if no Federal royalty rate is enacted by the date described in paragraph (1), the royalty rate used for purposes of the royalty income approach analysis prepared under section 7(a)(4)(D).

(c) **STATE LAW UNAFFECTED.**—Nothing in this Act modifies, expands, diminishes, amends, or otherwise affects any State law

(including regulations) relating to the imposition, application, timing, or collection of a State excise or severance tax under Arizona Revised Statutes 42-5201-5206.

(d) **USE OF FUNDS.**—The funds paid to the United States under this section shall—

(1) be deposited in a special account of the Treasury; and

(2) remain available, without further appropriation, to the Secretary and the Secretary of the Interior, as the Secretaries jointly determine to be appropriate, for the acquisition of land or interests in land from willing sellers in the State of Arizona.

**SEC. 13. MISCELLANEOUS PROVISIONS.**

(a) **REVOCATION OF ORDERS; WITHDRAWAL.**—

(1) **REVOCATION OF ORDERS.**—Any public land order that withdraws the Federal land from appropriation or disposal under a public land law shall be revoked to the extent necessary to permit disposal of the land.

(2) **WITHDRAWAL.**—On the date of enactment of this Act, if the Federal land or any Federal interest in the non-Federal land to be exchanged under section 4 is not withdrawn or segregated from entry and appropriation under a public land law (including mining and mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.)), the land or interest shall be withdrawn, without further action required by the Secretary concerned, from entry and appropriation, subject to the valid existing rights of Resolution Copper, until the date of the conveyance of Federal land under section 4(b).

(b) **MAPS, ESTIMATES, AND DESCRIPTIONS.**—

(1) **MINOR ERRORS.**—The Secretary concerned and Resolution Copper, may correct, by mutual agreement, any minor errors in any map, acreage estimate, or description of any land conveyed or exchanged under this Act.

(2) **CONFLICT.**—If there is a conflict between a map, an acreage estimate, or a description of land under this Act, the map shall control unless the Secretary concerned and Resolution Copper mutually agree otherwise.

(3) **AVAILABILITY.**—On the date of enactment of this Act, the Secretary shall file and make available for public inspection in the Office of the Supervisor, Tonto National Forest, each map referred to in this Act.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 411. A bill to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the City of St. George, Utah for airport purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BENNETT. Mr. President, I, along with the senior senator from Utah, am introducing today legislation to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the city of St. George, Utah for airport purposes.

On October 17, 2008, the City of St. George, UT, and the Federal Aviation Administration, FAA, broke ground on the construction of a new replacement airport, which will provide enhanced air service to the over 300,000 residents of southern Utah. The total project will cost \$168 million and the start of operations at the replacement airport is scheduled for January 1, 2011.

The project is being funded largely through Federal grants covered by a letter of intent from the FAA in the amount of \$119 million.

The City of St. George is financing its \$44 million local share of the replacement airport through the sale of the existing airport property totaling 274 acres to Anderson Development Services Inc.

Recently it was discovered that 40 acres of the existing airport site was acquired by the City of St. George under Section 16 of the Federal Airport Act of 1946 (60 Stat. 173; 49 U.S.C. 1115) and can only be used for airport purposes.

The United States Secretary of the Interior issued a patent to the city of St. George in 1951 for the 40 acres and the city signed a deed to the land dated August 28, 1973, which contains a reverter deed restriction that if the land ceased to be used for airport purposes, the title would revert back to the United States Secretary of Transportation.

Federal legislation is required to authorize the Secretary of Transportation to release this reverter deed restriction on the use of this 40 acre parcel so the sale of the entire 274 acre airport can go through. A similar legislation (Public Law 94-244) releasing identical deed restrictions was enacted for the City of Grand Junction, CO; in 1976.

The legislation requires that upon release from these restrictions, the City of St. George, UT, must sell the 40 acre parcel for fair market value, which is estimated at \$5 million, and the proceeds must be given to the FAA for the development, improvement, operation, or maintenance of the replacement airport as part of St. George's local contribution.

I urge my colleagues to support this straight-forward legislation. All funds will still be directed to the FAA. However, this minor correction will go a long way in assisting one of the fastest growing counties in the United States.

By Mr. INHOFE:

S. 412. A bill to establish the Federal Emergency Management Agency as an independent agency, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INHOFE. Mr. President, today I am reintroducing a bill I had introduced with then-Senator Hillary Clinton on two previous occasions. It is interesting, because this bill didn't have a lot of opposition in the Senate. It did, however, have some opposition from the Bush administration. What we were attempting to do was to take the Federal Emergency Management Agency out from under where it was put, in the Department of Homeland Security, by the previous administration and give it independent status. This is something that has been talked about for a long period of time.

We can draw from our experience in Oklahoma and the fact that we had a devastating tornado go through—as we did last night, although it was even worse—which killed many people. At that time, James Lee Witt was the FEMA Director. He was President Clinton's appointee. I will always remember when that happened. A matter of a

few short hours after it happened, I called Mr. Witt and he met me in Oklahoma, and we got it done. At that time, FEMA was under the Environment and Public Works Committee. It was under the Stafford Act and virtually had independent status at that time.

Contrast that with only a few months ago when GEN Russel Honore, the general placed in charge of the military's relief efforts following Hurricane Katrina, said that FEMA and the Department of Homeland Security should be separate agencies. In an interview reported in *Politico*, General Honore said of FEMA:

I just think we've had some experience that demonstrates that the best thing to do is separate it and make it a separate agency.

Most importantly, President Obama said in remarks he delivered in New Orleans in February of last year:

If catastrophe comes, the American people must be able to call on a competent government . . . the Director of FEMA will report to me . . . and as soon as we take office, my FEMA director will work with emergency management officials in all 50 States to create a National Response Plan. Because we need to know—before disaster comes—who will be in charge; and how the Federal, State and local governments will work together to respond.

I talked to the President a few minutes ago. He still has these same feelings. I think it is very appropriate now to bring up something we had talked about before. I know the Democratic platform, for example, has a provision which states that the FEMA Director will report directly to the President, and I couldn't agree more. I don't agree with a lot of things from the Democratic platform, but I do agree with that.

Oklahoma has had more than its share of natural disasters. Only last night, three confirmed tornadoes touched down throughout Oklahoma, impacting the communities of Oklahoma City, Edmond, Pawnee, and a small community called Lone Grove. In Lone Grove, this very tiny community, eight people were killed. There are 35 still missing, so I think the death toll, unfortunately, could rise above that. I had occasion to talk to civic leaders there—Gary Hicks and city manager Marianne Elfert—this morning, and the number of Lone Grove residents who are missing right now is still not determined. So I think it is a real disaster.

It wasn't that long ago that we had the Eagle Picher area of Oklahoma hit by a tornado, and that was a very similar thing there, with seven deaths in that case. On May 1 of last year, I surveyed other tornado damage up there with Secretary Chertoff and FEMA Director Paulison, Governor Henry, and Congressman BOREN. As I said, seven people were killed, but that didn't go quite as smoothly as we would have hoped.

FEMA's integration into the Department of Homeland Security in 2003 added an extra layer of bureaucracy and removed much of the autonomy

that once kept the agency operating efficiently. We learned in the aftermath of Hurricane Katrina that the extra coordination required between the Department of Homeland Security and the Federal Emergency Management Agency was at least partly responsible for the shortcomings of the Federal response. I visited the area right after Katrina, and I think they did a much better job than the press portrayed, but I still think that extra level of bureaucracy created a problem in getting things done immediately.

My legislation takes the necessary steps in giving the Director of FEMA Cabinet level status in the event of a natural disaster and acts of terrorism and makes that person the principal adviser to the President, Homeland Security Council, and the Secretary of Homeland Security. So we are kind of reversing it, and he is going to be in a Cabinet-level position. Obviously, things can then be done a lot faster and a lot better. Perhaps most importantly, the legislation defines the primary mission and specific activities of the Federal Emergency Management Agency and its Director, and places directly upon them the obligation to ensure FEMA's mission is carried out.

Now, that is exactly what President Obama said while he was campaigning for President and what he reaffirmed to me today on the telephone.

Let me explain some other events that originally led me to introduce this legislation. Oklahoma first encountered significant problems with FEMA when wildfires ravaged the State in 2005 and 2006. These devastating wildfires swept through the entire State, leading to declarations for public assistance, individual assistance, and hazard mitigation funding. In January of 2007, Oklahoma encountered severe winter storms with devastating results. These storms led to prolonged loss of power and extensive building damage for many of my constituents. One of my constituents happened to be my wife—we have been married 49 years—and she was without electricity for 9 days, so that does get your attention.

Later this year, Oklahoma was hit by heavy rain, tornadoes, and flooding from May through September. The State made a number of disaster declarations during each of these periods, but each and every time, the process it took to obtain aid from FEMA became increasingly difficult, wrought with indecisiveness and an inability of Homeland Security to communicate with each other. Prior to the placement of FEMA under DHS, my State had not encountered nearly the same level of bureaucratic delays or communications as it has since that time.

Oklahoma has also struggled with FEMA regarding the determination of dates of incident periods, which is why I put language in my bill to give deference to the State's documentation regarding the dates of such incidents. Now, some of you guys are not from

States where you have the number of disasters we have had, so it is something you are not as familiar with. But we certainly are. I see the junior Senator from Oklahoma on the floor here, and he knows too that we live through these things on a regular basis. We have had tornadoes, ice storms, windstorms, and other things people haven't had.

I think Senator Clinton and I were right when we introduced this the first time, and I believe it is consistent with what President Obama has reaffirmed to me as recently as today. It will be a better arrangement and I will be looking for supporters.

We have introduced the bill. It is S. 412. Again, this bill takes FEMA out from under DHS and gives it more of an independent status so it can respond in a more rapid way as it did prior to 2003.

By Mr. DODD (for himself, Mr. LEVIN, Mr. MENENDEZ, Mr. REED, Mr. AKAKA, Mr. SCHUMER, Mr. TESTER, Mr. BROWN, Mr. MERKLEY, Mr. KERRY, Mr. LEAHY, Mr. DURBIN, Mr. HARKIN, Mrs. MCCASKILL, Mr. WHITEHOUSE, and Mr. CASEY):

S. 414. A bill to amend the Consumer Credit Protection Act, to ban abusive credit practices, enhance consumer disclosures, protect underage consumers, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. DODD. Mr. President, I am pleased today to be reintroducing comprehensive credit card legislation that would reform credit card practices and prohibit card issuers from continuing policies that are threatening the financial security of American consumers and their families. The Credit Card Accountability, Responsibility and Disclosure Act, Credit CARD Act, will help to end the practices that cost American families billions of dollars each year.

This is a time of serious hardship for American families. As losses mount as a result of the economic crisis, lenders are squeezing consumers, often unfairly and without adequate notice, by raising credit card rates and tightening repayment terms. Credit card delinquency rates are inching higher, and repayment rates are dipping. At a time when Americans are becoming increasingly reliant on credit cards, credit card companies are being more aggressive about finding ways to charge their customers. Over \$17 billion in credit card penalty fees were charged to Americans in 2006—a ten-fold increase from what was charged just ten years ago. These penalties are contributing to the avalanche of credit card debt under which many American consumers increasingly find themselves buried.

In my travels around Connecticut, I hear frequently about the burden of these credit card practices from constituents. Connecticut has the third-



highest median amount of credit card debt in the country—\$2,094 per person. Non-business bankruptcy filings in the State are increasing, and in the second quarter of last year, credit card delinquencies increased in 7 of the 8 counties in the State.

In December, the Federal Reserve, Office of Thrift Supervision, and National Credit Union Administration finalized unfair and deceptive acts and practices rules aimed at curbing some of these practices. For example, for customers in good standing the new rules will prevent issuers from applying interest rate increases retroactively to credit card debt incurred prior to the interest rate increase. They will also help ensure that issuers apply payments fairly, and extend the time that consumers have to make their credit card payments. The rules are a good first step in providing needed consumer protections in some areas. They fall short in other important areas, however, failing to address issues including universal default, “any time any reason” repricing, multiple overlimit fees, and youth marketing, which I’ll explain in a moment.

In anticipation of rules going into effect in July of 2010, issuers are raising their interest rates and cutting lines of credit even on consumers with a long and unblemished history of good payment, thereby underscoring the need for this legislation.

That is why I am reintroducing the Credit CARD Act. This bill will help to reform credit card practices that drag so many American families further and further into debt, and prevent banks from taking advantage of consumers through confusing, misleading, and unfair terms and procedures. It strengthens regulation and oversight of the credit card industry and prohibits the unfair and deceptive practices that in far too many instances keep consumers mired in debt.

Among its other provisions, the CARD Act will eliminate imposition of excessive fees and penalties; universal default provisions that permit credit card issuers to increase interest rates on cardholders in good standing for reasons unrelated to the cardholder’s behavior with respect to that card; “Any time any reason” changes to credit card agreements—the bill prevents issuers from unilaterally changing the terms of a credit card contract for the length of the card agreement; and retroactive interest rate increases, unfair payment allocation practices, and double-cycle billing.

The Credit Card Act also contains additional critical consumer protections. Among other things, the bill would: allow customers who close their accounts to pay under the terms existing at the time the account is closed; ensure that cardholders receive sufficient information about the terms of their account; require issuers to lower penalty rates that have been imposed on a cardholder after 6 months if the cardholder meets the obligations of the

credit card terms; and enhance regulators’ ability to protect consumers against unfair credit card practices by giving each federal banking agency the authority to prescribe regulations governing unfair or deceptive practices by the institutions they regulate.

The bill also reins in irresponsible lending through a number of provisions aimed at protecting young consumers who lack the ability to repay substantial credit card debt.

This legislation incorporates several key concepts included in the legislative proposals put forth by some of my colleagues, notably Senators LEVIN, MENENDEZ, AKAKA, and TESTER. Each is a cosponsor of this legislation, as are Senators REED, SCHUMER, BROWN, MERKLEY, KERRY, LEAHY, DURBIN, HARKIN, MCCASKILL, WHITEHOUSE, and CASEY.

This bill has the support of a wide array of consumer advocates and labor organizations, including the Center for Responsible Lending, Connecticut Public Interest Research Group, the Connecticut Association for Human Services, Consumer Action, Consumer Federation of America, Consumers Union, Demos, the Leadership Conference on Civil Rights, the NAACP, the National Association of Consumer Advocates, the National Consumer Law Center, the National Council of LaRaza, the Service Employees International Union, and the U.S. Public Interest Research Group. The bill also has the support of the National Small Business Association.

As the U.S. economy tightens, financially vulnerable families need the protections of the Credit CARD Act more than ever. That is what the American people and the people of Connecticut are demanding. For this reason, I urge my colleagues to join me in cosponsoring, and eventually in enacting the Credit CARD Act.

Mr. LEVIN. Mr. President, I am pleased today to join my friend and colleague Senator DODD in reintroducing comprehensive legislation to combat credit card abuses that have been hurting American consumers for far too long. Our bill, which is supported and cosponsored by other Senate colleagues as well, is called the Credit Card Accountability Responsibility and Disclosure Act, or CARD Act of 2009. With the economic hardships facing Americans today, from falling home prices to rising unemployment, it is more important than ever for Congress to act now to stop credit card abuses and protect American families and businesses from unfair credit card practices.

Every day the taxpayer is being asked to foot the bill for our biggest banks’ irresponsible lending decisions. America’s banking giants can’t be allowed to dig themselves out of the hole they are in by loading up American families with unfair fees and interest charges. Even as the prime rate has plummeted, some credit card companies are hiking interest rates on mil-

lions of customers who play by the rules. In other words, the banks are punishing the very taxpayers that they have come to, hat in hand, for financial rescue. It can’t be allowed to continue.

Credit card companies regularly use a host of unfair practices. They hike the interest rates of cardholders who pay on time and comply with their credit card agreements. They impose interest rates as high as 32 percent, charge interest for debt that was paid on time, and, in some cases, apply higher interest rates retroactively to existing credit card debt. They pile on excessive fees and then charge interest on those fees. And they engage in a number of other unfair practices that are burying American consumers in a mountain of debt. It’s long past time to enact legislation to protect American consumers.

In December, the Federal Reserve and other bank regulators finally issued a regulation to stop some of the most egregiously unfair practices. For example, the new credit card regulation stops banks from retroactively raising interest rates on cardholders who meet their obligations, requires banks to mail credit card bills at least 21 days before the payment due date, and forces banks to more fairly apply consumer payments. It is a good first step, and long overdue. But the regulation regrettably leaves in place many blatantly unfair credit card practices that mire families in debt. It fails to stop, for example, abuses such as charging interest on debt that was paid on time, charging folks a fee simply to pay their bills, and hiking interest rates on a credit card because of a misstep on another, unrelated debt, a practice known as universal default. Legislation is needed not only to end those abusive practices—which are not prohibited by the Federal Reserve regulation—but also to provide a statutory foundation for that new regulation so that it cannot be weakened in the future.

The bill we are introducing today will not only help protect consumers and ensure their fair treatment, but it will also make certain that credit card companies willing to do the right thing are not put at a competitive disadvantage by companies continuing unfair practices.

Some argue that Congress doesn’t need to ban unfair credit card practices; they contend that improved disclosure alone will empower consumers to seek out better deals. Sunlight can be a powerful disinfectant, but credit cards have become such complex financial products that even improved disclosure will frequently not be enough to curb the abuses. Some practices are so confusing that consumers can’t easily understand them. Additionally, better disclosure does not always lead to greater market competition, especially when essentially an entire industry is using and benefiting from practices that unfairly hurt consumers.

In 2006, Americans used 700 million credit cards to buy about \$2 trillion in

goods and services. The average family now has 5 credit cards. Credit cards are being used to pay for groceries, mortgage payments, even taxes. And they are saddling U.S. consumers, from college students to seniors, with a mountain of debt. The latest figures show that U.S. credit card debt is now approaching \$1 trillion. These consumers are routinely being subjected to unfair practices that squeeze them for ever more money, sinking them further and further into debt.

Congress acted boldly and quickly to bail out the banks; now is time to do something for the consumer. Too many American families are being hurt by too many unfair credit card practices to delay action any longer. I commend Senator DODD, Chairman of the Senate Banking Committee, for tackling credit card reform, and look forward to Congress promptly and urgently taking the steps needed to ban unfair practices that are causing so much pain and financial damage to American families.

Abusive credit card practices are a concern that I have been tracking over the past several years through the Permanent Subcommittee on Investigations, which I chair. The Subcommittee held two investigative hearings in 2007, exposing those practices, and based on those hearings, I introduced legislation—the Stop Unfair Practices in Credit Cards Act, S. 1395—to ban the outrageous credit card abuses we documented. I am pleased that Senators MCCASKILL, LEAHY, DURBIN, BINGAMAN, CANTWELL, WHITEHOUSE, KOHL, BROWN, KENNEDY, and SANDERS joined as cosponsors. The Dodd-Levin bill we are introducing today incorporates almost all of S. 1395, and adds other important protections as well. It is the strongest credit card bill yet.

The Dodd-Levin bill includes, for example, the following provisions that also appeared in the bill I introduced with Senator MCCASKILL and others. It would:

**No Interest on Debt Paid on Time.** Prohibit interest charges on any portion of a credit card debt which the card holder paid on time during a grace period.

**Prohibition on Universal Default.** Prohibit credit card issuers from increasing interest rates on cardholders in good standing for reasons unrelated to the cardholder's behavior with respect to that card.

**Apply Interest Rate Increases Only to Future Debt.** Require increased interest rates to apply only to future credit card debt, and not to debt incurred prior to the increase.

**No Interest on Fees.** Prohibit the charging of interest on credit card transaction fees, such as late fees and over-the-limit fees.

**Restrictions on Over-Limit Fees.** Prohibit the charging of repeated over-limit fees for a single instance of exceeding a credit card limit.

**Prompt and Fair Crediting of Card Holder Payments.** Require payments to

be applied first to the credit card balance with the highest rate of interest, and to minimize finance charges.

**Fixed Credit Limits.** Require card issuers to offer consumers the option of operating under a fixed credit limit that cannot be exceeded.

**No Pay-to-Pay Fees.** Prohibit charging a fee to allow a credit card holder to make a payment on a credit card debt, whether payment is by mail, telephone, electronic transfer, or otherwise.

The Dodd-Levin bill also includes important additional protections. It would:

**Require issuers to lower penalty rates** that have been imposed on a cardholder after 6 months if the cardholder commits no further violations.

**Enhance protection against unfair and deceptive practices** by giving each federal banking agency the authority to prescribe regulations governing unfair or deceptive practices by banks or savings and loan institutions.

**Improve disclosure requirements** by, for example, requiring issuers to provide individual consumer account information and to disclose the period of time and total interest it will take to pay off the card balance if only minimum monthly payments are made.

**Protect young consumers from credit card solicitations.**

To understand why these protections are needed, I would like to provide a brief overview of some of the most prevalent credit card abuses we uncovered and some of the stories that American consumers shared with us during the course of the inquiries carried out by my Permanent Subcommittee on Investigations.

The first case history we examined illustrates the fact that major credit card issuers today impose a host of fees on their cardholders, including late fees and over-the-limit fees that are not only substantial in themselves but can contribute to years of debt for families unable to immediately pay them.

Wesley Wannemacher of Lima, Ohio, testified at our March 2007 hearing. In 2001 and 2002, Mr. Wannemacher used a new credit card to pay for expenses mostly related to his wedding. He charged a total of about \$3,200, which exceeded the card's credit limit by \$200. He spent the next six years trying to pay off the debt, averaging payments of about \$1,000 per year. As of February 2007, he'd paid about \$6,300 on his \$3,200 debt, but his billing statement showed he still owed \$4,400.

How is it possible that a man pays \$6,300 on a \$3,200 credit card debt, but still owes \$4,400? Here's how. On top of the \$3,200 debt, Mr. Wannemacher was charged by the credit card issuer about \$4,900 in interest, \$1,100 in late fees, and \$1,500 in over-the-limit fees. He was hit 47 times with over-limit fees, even though he went over the limit only 3 times and exceeded the limit by only \$200. Altogether, these fees and the interest charges added up to \$7,500, which, on top of the original \$3,200

credit card debt, produced total charges to him of \$10,700.

In other words, the interest charges and fees more than tripled the original \$3,200 credit card debt, despite payments by the cardholder averaging \$1,000 per year. Unfair? Clearly, but our investigation has shown that sky-high interest charges and fees are not uncommon in the credit card industry. While the Wannemacher account happened to be at Chase, penalty interest rates and fees are also employed by other major credit card issuers.

The week before our March hearing, Chase decided to forgive the remaining debt on the Wannemacher account, and while that was great news for the Wannemacher family, that decision didn't begin to resolve the problem of excessive credit card fees and sky-high interest rates that trap too many hard-working families in a downward spiral of debt.

These high fees are made worse by the industry-wide practice of including all fees in a consumer's outstanding balance so that they also incur interest charges. Those interest charges magnify the cost of the fees and can quickly drive a family's credit card debt far beyond the cost of their initial purchases. It is one thing for a bank to charge interest on funds lent to a consumer; charging interest on penalty fees goes too far.

A second troubling case history involves Charles McClune, a 51-year-old Michigan resident who is married with one child. Mr. McClune has a credit card account which he closed in 1998, and has been trying to pay off for more than 10 years. Due to excessive fees and interest rates, and despite paying more than four times his original credit card debt of less than \$4,000, Mr. McClune still owes thousands on his credit card, with no end in sight.

Mr. McClune first opened his credit card account while in college, in 1986, at Michigan National Bank through a student-targeted credit promotion. After leaving college, the credit limit on his card was increased to \$4,000. By 1993, although he had not exceeded the credit limit through purchases, Mr. McClune had missed some payments and was assessed interest and fees that pushed his balance over the \$4,000 limit. From 1993 to 1996, he exceeded his limit again, on several occasions, due to interest and fee charges. He stopped making purchases on the credit card in 1995.

In 1996, Mr. McClune's credit card account was purchased by Chase Bank. In 1998, Mr. McClune asked Chase to close the account, and Chase did so. Although he never made a single purchase on his credit card while the account was with Chase, Chase repeatedly increased the interest rate on his account, including after the account was closed. In 2002, for example, his interest rate was about 21 percent; by October 2005, it had climbed to 29.99 percent where it remained for more than two years until March 2008; it then



dropped slightly to 29.24 percent. The higher interest rates were applied retroactively to Mr. McClune's closed account balance, increasing the size of his minimum payments and his overall debt.

Chase also assessed Mr. McClune repeated over-the-limit and late fees, which began at \$29 and increased over time to \$39 per fee. Chase cannot locate statements for Mr. McClune's account prior to February 2001, so there is no record of all the fees he has paid. The records in existence show that, since February 2001, he has paid 64 over-the-limit fees totaling \$2,200. Those fees stopped after the March 2007 hearing before my Subcommittee, in which Chase promised to stop charging more than three over-the-limit fees for a single violation of a credit card limit. In addition to the 64 over-the-limit fees, since February 2001, Chase has charged Mr. McClune nearly \$2,000 in late fees.

The records also show that since 2001, Mr. McClune was contacted by telephone on several occasions by Chase representatives seeking payment on his account. If he agreed to make a payment over the telephone, Chase charged him—without notifying him at the time—a fee of \$12 to \$15 per telephone payment. When asked about these fees, Chase told the Subcommittee that the fees were imposed, because on each occasion Mr. McClune had spoken with a “live advisor.” Since 2001, he has paid a total of \$160 in these pay-to-pay fees.

Altogether, since 2001, Mr. McClune has paid nearly \$4,400 in fees on a debt of less than \$4,000. If the more than four years of missing credit card bills were available from 1996 to 2000, this fee total would be even higher. In addition, each fee was added to Mr. McClune's outstanding credit card balance, and Chase charged him interest on the fee amounts, thereby increasing his debt by thousands of additional dollars.

In February 2001, Chase records show that Mr. McClune's credit card debt totaled nearly \$5,200. For the next 7 years, although he did not pay every month, Mr. McClune paid nearly \$2,000 per year toward his credit card debt, but was unable to pay it off. At one time, he paid \$150 every two weeks for several weeks. Those payments did not bring his debt under the \$4,000 credit limit, or reduce his interest rate.

In January 2007, Mr. McClune received a letter from Chase stating that if he made his next payment on time, he would receive a \$50 credit on his debt. Mr. McClune cashed out his IRA and paid \$4,000 on his credit card debt. Because he made this payment in February, however, he did not receive the \$50 credit for an on-time payment. Instead, he was assessed a \$39 late fee, a \$39 over-the-limit fee, and a \$14.95 payment fee for making the \$4,000 payment over the telephone.

Mr. McClune was never offered a payment plan or a reduced interest rate by Chase to help him pay down his debt.

His credit card bills show that from February 2001 to June 2008, he paid Chase a total of \$15,800. If the four years of missing credit card bills from 1996 to 2000 were available, his total payments would likely exceed \$20,000. In June 2008, his credit card bill showed he was charged 29 percent interest and a \$39 late fee on a balance of \$3,300.

How could Mr. McClune pay \$15,000 to \$20,000 on credit card purchases of less than \$4,000, and still owe \$3,300? His credit card statements since 2001 show that he was socked with over \$9,700 in interest charges, \$2,200 in over-the-limit fees, \$2,000 in late fees, and \$160 in pay-to-pay fees. All of these interest charges and fees were assessed by Chase while the account was closed and without a single purchase having been made since 1995. Despite his lack of purchases and payments totaling \$15,800, Chase records show that, from February 2001 until June 2008, Mr. McClune was able to reduce his credit card balance by only about \$1,850.

Mr. McClune is not trying to avoid his debt. He has made years of payments on a closed credit card account that he has not used to make a purchase in 13 years. He has paid thousands and thousands of dollars—four and possibly five times what he originally owed—in an attempt to pay off his credit card account. He is still paying. But his thousands of dollars in payments are not enough for his credit card issuer which is squeezing him for every cent it can, fair or not, for years on end.

Tragically, Mr. McClune and Mr. Wannemacher have a lot of company in their credit card experiences. The many case histories investigated by the Subcommittee show that responsible cardholders across the country are being squeezed by unfair credit card lending practices involving excessive fee and interest charges. The current regulatory regime—even with the new Federal Reserve regulation—is insufficient to prevent these ongoing credit card abuses. Legislation is badly needed.

Another galling practice featured in our March hearing involves the fact that credit card debt that is paid on time routinely accrues interest charges, and credit card bills that are paid on time and in full are routinely inflated with what I call “trailing interest.” Every single credit card issuer contacted by the Subcommittee engaged in both of these unfair practices which squeeze additional interest charges from responsible cardholders.

Here's how it works. Suppose a consumer who usually pays his account in full, and owes no money on December 1st, makes a lot of purchases in December, and gets a January 1 credit card bill for \$5,020. That bill is due January 15. Suppose the consumer pays that bill on time, but pays \$5,000 instead of the full amount owed. What do you think the consumer owes on the next bill?

If you thought the bill would be the \$20 past due plus interest on the \$20,

you would be wrong. In fact, under industry practice today, the bill would likely be twice as much. That's because the consumer would have to pay interest, not just on the \$20 that wasn't paid on time, but also on the \$5,000 that was paid on time. In other words, the consumer would have to pay interest on the entire \$5,020 from the first day of the new billing month, January 1, until the day the bill was paid on January 15, compounded daily. So much for a grace period! In addition, the consumer would have to pay the \$20 past due, plus interest on the \$20 from January 15 to January 31, again compounded daily. In this example, using an interest rate of 17.99 percent (which is the interest rate charged to Mr. Wannamacher), the \$20 debt would, in one month, rack up \$35 in interest charges and balloon into a debt of \$55.21.

You might ask—hold on—why does the consumer have to pay any interest at all on the \$5,000 that was paid on time? Why does anyone have to pay interest on the portion of a debt that was paid by the date specified in the bill—in other words, on time? The answer is, because that's how the credit card industry has operated for years, and they have gotten away with it.

There's more. You might think that once the consumer gets gouged in February, paying \$55.21 on a \$20 debt, and pays that bill on time and in full, without making any new purchases, that would be the end of it. But you would be wrong again. It's not over.

Even though, on February 15, the consumer paid the February bill in full and on time—all \$55.21—the next bill has an additional interest charge on it, for what we call “trailing interest.” In this case, the trailing interest is the interest that accumulated on the \$55.21 from February 1 to 15, which is the time period from the day when the bill was sent to the day when it was paid. The total is 38 cents. While some issuers will waive trailing interest if the next month's bill is less than \$1, if a consumer makes a new purchase, a common industry practice is to fold the 38 cents into the end-of-month bill reflecting the new purchase.

Now 38 cents isn't much in the big scheme of things. That may be why many consumers don't notice these types of extra interest charges or try to fight them. Even if someone had questions about the amount of interest on a bill, most consumers would be hard pressed to understand how the amount was calculated, much less whether it was incorrect. But by nickel and diming tens of millions of consumer accounts, credit card issuers reap large profits. I think it is indefensible to make consumers pay interest on debt which they pay on time. It is also just plain wrong to charge trailing interest when a bill is paid on time and in full.

My Subcommittee's second hearing focused on another set of unfair credit card practices involving unfair interest

rate increases. Cardholders who had years-long records of paying their credit card bills on time, staying below their credit limits, and paying at least the minimum amount due, were nevertheless socked with substantial interest rate increases. Some saw their credit card interest rates double or even triple. At the hearing, three consumers described this experience.

Janet Hard of Freeland, Michigan, had accrued over \$8,000 in debt on her Discover card. Although she made payments on time and paid at least the minimum due for over two years, Discover increased her interest rate from 18 percent to 24 percent in 2006. At the same time, Discover applied the 24 percent rate retroactively to her existing credit card debt, increasing her minimum payments and increasing the amount that went to finance charges instead of the principal debt. The result was that, despite making steady payments totaling \$2,400 in twelve months and keeping her purchases to less than \$100 during that same year, Janet Hard's credit card debt went down by only \$350. Sky-high interest charges, inexplicably increased and unfairly applied, ate up most of her payments.

Millard Glasshof of Milwaukee, Wisconsin, a retired senior citizen on a fixed income, incurred a debt of about \$5,000 on his Chase credit card, closed the account, and faithfully paid down his debt with a regular monthly payment of \$119 for years. In December 2006, Chase increased his interest rate from 15 percent to 17 percent, and in February 2007, hiked it again to 27 percent. Retroactive application of the 27 percent rate to Mr. Glasshof's existing debt meant that, out of his \$119 payment, about \$114 went to pay finance charges and only \$5 went to reducing his principal debt. Despite his making payments totaling \$1,300 over twelve months, Mr. Glasshof found that, due to high interest rates and excessive fees, his credit card debt did not go down at all. Later, after the Subcommittee asked about his account, Chase suddenly lowered the interest rate to 6 percent. That meant, over a one year period, Chase had applied four different interest rates to his closed credit card account: 15 percent, 17 percent, 27 percent, and 6 percent, which shows how arbitrary those rates are.

Then there is Bonnie Rushing of Naples, Florida. For years, she had paid her Bank of America credit card on time, providing at least the minimum amount specified on her bills. Despite her record of on-time payments, in 2007, Bank of America nearly tripled her interest rate from 8 to 23 percent. The Bank said that it took this sudden action because Ms. Rushing's FICO credit score had dropped. When we looked into why it had dropped, it was apparently because she had opened Macy's and J. Jill credit cards to get discounts on purchases. Despite paying both bills on time and in full, the automated FICO system had lowered her credit rating, and Bank of America had followed suit by

raising her interest rate by a factor of three. Ms. Rushing closed her account and complained to the Florida Attorney General, my Subcommittee, and her card sponsor, the American Automobile Association. Bank of America eventually restored the 8 percent rate on her closed account.

In addition to these three consumers who testified at the hearing, the Subcommittee presented case histories for five other consumers who experienced substantial interest rate increases despite complying with their credit card agreements.

I'd also like to note that, in each of these cases, the credit card issuer told our Subcommittee that the cardholder had been given a chance to opt out of the increased interest rate by closing their account and paying off their debt at the prior rate. But each of these cardholders denied receiving an opt-out notice, and when several tried to close their account and pay their debt at the prior rate, they were told they had missed the opt-out deadline and had no choice but to pay the higher rate. Our Subcommittee examined copies of the opt-out notices and found that some were filled with legal jargon, were hard to understand, and contained procedures that were hard to follow. When we asked the major credit card issuers what percentage of persons offered an opt-out actually took it, they told the Subcommittee that 90 percent did not opt out of the higher interest rate—a percentage that is contrary to all logic and strong evidence that current opt-out procedures don't work.

The case histories presented at our hearings illustrate only a small portion of the abusive credit card practices going on today. Since early 2007, the Subcommittee has received letters and emails from thousands of credit card cardholders describing unfair credit card practices and asking for help to stop them, more complaints than I have received in any investigation I've conducted in more than 25 years in Congress. The complaints stretch across all income levels, all ages, and all areas of the country. The bottom line is that these abuses have gone on for too long. In fact, these practices have been around for so many years that they have in many cases become the industry norm, and our investigation has shown that many of the practices are too entrenched, too profitable, and too immune to consumer pressure for the companies to change them on their own.

For these reasons, I urge my colleagues to support enactment of the Dodd-Levin Credit CARD Act this year. Congress has already gone to bat for the banks that engage in abusive credit card practices; it's time we go to bat for the American family.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN, Mr. CARDIN, Mr. CASEY, Mr. DURBIN, Mr. FEINGOLD, Mr. KENNEDY, Ms. MIKULSKI, Mr. MENENDEZ, Mr. MERKLEY, Mr. SANDERS, Ms.

STABENOW, and Mr. WHITEHOUSE):

S. 416. A bill to limit the use of cluster munitions; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Mr. President, I rise today with my friend and colleague from Vermont, Senator LEAHY, to re-introduce the Cluster Munitions Civilian Protection Act.

The bill is also co-sponsored by Senators BINGAMAN, BOXER, BROWN, CARDIN, CASEY, DURBIN, FEINGOLD, KENNEDY, MIKULSKI, MENENDEZ, MERKLEY, SANDERS, STABENOW, and WHITEHOUSE.

Our legislation places common sense restrictions on the use of cluster bombs. It prevents any funds from being spent to use cluster munitions that have a failure rate of more than one percent; and unless the rules of engagement specify: the cluster munitions will only be used against clearly defined military targets and; will not be used where civilians are known to be present or in areas normally inhabited by civilians.

The bill also requires the President to submit a report to the appropriate Congressional committees on the plan to clean up unexploded cluster bombs.

Finally, the bill includes a national security waiver that allows the President to waive the prohibition on the use of cluster bombs with a failure rate of more than one percent, if he determines it is vital to protect the security of the United States to do so.

Cluster munitions are large bombs, rockets, or artillery shells that contain up to hundreds of small submunitions, or individual "bomblets."

They are intended for attacking enemy troop formations and armor covering over a half mile radius.

Yet, in practice, they pose a real threat to the safety of civilians when used in populated areas because they leave hundreds of unexploded bombs over a very large area and they are often inaccurate.

Indeed, the human toll of these weapons has been terrible:

In Laos, approximately 11,000 people, 30 percent of them children, have been killed or injured by U.S. cluster munitions since the Vietnam War ended.

In Afghanistan, between October 2001 and November 2002, 127 civilians lost their lives due to cluster munitions, 70 percent of them under the age of 18.

An estimated 1,220 Kuwaitis and 400 Iraqi civilians have been killed by cluster munitions since 1991.

In the 2006 war in Lebanon, Israeli cluster munitions, many of them manufactured in the U.S., injured and killed 200 civilians.

During the 2003 invasion of Baghdad, the last time the U.S. used cluster munitions, these weapons killed more civilians than any other type of U.S. weapon.

The U.S. 3rd Infantry Division described cluster munitions as "battlefield losers" in Iraq, because they were often forced to advance through areas contaminated with unexploded duds.

During the 1991 Gulf War, U.S. cluster munitions caused more U.S. troop casualties than any single Iraqi weapon system, killing 22 U.S. servicemen.

Yet we have seen significant progress in the effort to protect innocent civilians from these deadly weapons since we first introduced this legislation in the 110th Congress.

In December, 95 countries came together to sign the Oslo Convention on Cluster Munitions which would prohibit the production, use, and export of cluster bombs and requires signatories to eliminate their arsenals within 8 years.

This group includes key NATO allies such as Canada, the United Kingdom, France, and Germany, who are fighting alongside our troops in Afghanistan.

In 2007, Congress passed and President Bush signed into law a provision from our legislation contained in the fiscal year 2008 Consolidated Appropriations Act prohibiting the sale and transfer of cluster bombs with a failure rate of more than one percent.

In addition, the Senate Appropriations Committee approved the fiscal year 2009 State, Foreign Operations and Related Programs Appropriations bill renewing the ban for another year.

I am confident this ban will be included in an fiscal year 2009 Omnibus appropriations bill.

These actions will help save lives. But much more work remains to be done and significant obstacles remain.

For one, the United States chose not to participate in the Oslo process or sign the treaty.

The Pentagon continues to believe that cluster munitions are “legitimate weapons with clear military utility in combat.” It would prefer that the United States work within the Geneva-based Convention on Certain Conventional Weapons, CCW, to negotiate limits on the use of cluster munitions.

Yet these efforts have been going on since 2001 and it was the inability of the CCW to come to any meaningful agreement which prompted other countries, led by Norway, to pursue an alternative treaty through the Oslo process.

A lack of U.S. leadership in this area has given cover to other major cluster munitions producing nations—China, Russia, India, Pakistan, Israel, and Egypt—who have refused to sign the Oslo Convention as well.

Recognizing the United States could not remain silent in the face of international efforts to restrict the use of cluster bombs, Secretary of Defense Robert Gates issued a new policy on cluster munitions in June 2008 stating that after 2018, the use, sale and transfer of cluster munitions with a failure rate of more than 1 percent would be prohibited.

The policy is a step in the right direction, but under the terms of this new policy, the Pentagon will still have the authority to use cluster bombs with high failure rates for the next ten years.

That is unacceptable and runs counter to our values.

The United States maintains an arsenal of an estimated 5.5 million cluster

munitions containing 728 million submunitions which have an estimated failure rate of between 5 and 15 percent.

What does that say about us, that we are still prepared to use, sell and transfer these weapons with well known failure rates?

The fact is, cluster munition technologies already exist, that meet the one percent standard. Why do we need to wait ten years?

This delay is especially troubling given that in 2001, former Secretary of Defense William Cohen issued his own policy on cluster munitions stating that, beginning in fiscal year 2005, all new cluster munitions must have a failure rate of less than one percent.

Unfortunately, the Pentagon was unable to meet this deadline and Secretary Gates’ new policy essentially postpones any meaningful action for another ten years.

That means, if we do nothing, by 2018 close to twenty years will have passed since the Pentagon first recognized the threat these deadly weapons pose to innocent civilians.

We can do better.

Our legislation simply moves up the Gates policy by ten years. For those of my colleagues who are concerned that it may be too soon to enact a ban on the use of cluster bombs with failure rates of more than one percent, I point out again that our bill allows the President to waive this restriction if he determines it is vital to protect the security of the United States to do so.

I would also remind my colleagues that the United States has not used cluster bombs in Iraq since 2003 and has observed a moratorium on their use in Afghanistan since 2002.

We introduced this legislation to make this moratorium permanent for the entire U.S. arsenal of cluster munitions.

We introduced this legislation for children like Hassan Hammade.

A 13-year-old Lebanese boy, Hassan lost four fingers and sustained injuries to his stomach and shoulder after he picked up an unexploded cluster bomb in front of an orange tree.

He said:

I started playing with it and it blew up. I didn’t know it was a cluster bomb—it just looked like a burned out piece of metal.

All the children are too scared to go out now, we just play on the main roads or in our homes.

I urge my colleagues to support this legislation. We should do whatever we can to protect more innocent children and other civilians from these dangerous weapons.

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

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

S. 416

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Cluster Munitions Civilian Protection Act of 2009”.

#### SEC. 2. LIMITATION ON THE USE OF CLUSTER MUNITIONS.

No funds appropriated or otherwise available to any Federal department or agency may be obligated or expended to use any cluster munitions unless—

(1) the submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments; and

(2) the policy applicable to the use of such cluster munitions specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.

#### SEC. 3. PRESIDENTIAL WAIVER.

The President may waive the requirement under section 2(1) if, prior to the use of cluster munitions, the President—

(1) certifies that it is vital to protect the security of the United States; and

(2) not later than 30 days after making such certification, submits to the appropriate congressional committees a report, in classified form if necessary, describing in detail—

(A) the steps that will be taken to protect civilians; and

(B) the failure rate of the cluster munitions that will be used and whether such munitions are fitted with self-destruct or self-deactivation devices.

#### SEC. 4. CLEANUP PLAN.

Not later than 90 days after any cluster munitions are used by a Federal department or agency, the President shall submit to the appropriate congressional committees a plan, prepared by such Federal department or agency, for cleaning up any such cluster munitions and submunitions which fail to explode and continue to pose a hazard to civilians.

#### SEC. 5. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

In this Act, the term “appropriate congressional committees” means the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

Mr. LEAHY. Mr. President, I am pleased to join with my friend from California, Senator FEINSTEIN, in introducing the Cluster Munitions Civilian Protection Act of 2009. This is a slightly revised version of a bill of the same name which we introduced in 2007.

Since December 3, 2008, when the Convention on Cluster Munitions opened for signature in Dublin, 96 countries have signed the treaty including Great Britain, Germany, Canada, Norway, Australia and other allies of the United States.

The treaty is the culmination of a year of negotiations, launched by Norway, among 107 governments that came together to prohibit the use of cluster munitions that cause unacceptable harm to civilians.

The Bush administration did not participate in the negotiations, which I believe was a mistake. As the Nation with the world’s most powerful military we should not be on the sidelines while others are trying to protect the

lives and limbs of civilians who comprise the vast majority of war casualties today.

The Pentagon continues to insist that cluster munitions have military utility, and that the U.S. should retain the ability to use millions of cluster munitions in its arsenal which have estimated failure rates of 5 to 20 percent.

Of course, any weapon, whether cluster munitions, landmines, or even poison gas, has some military utility. But anyone who has seen the indiscriminate devastation cluster munitions cause over a wide area understands the unacceptable threat they can pose to civilians. These are not the laser guided weapons the Pentagon showed destroying their targets during the invasion of Baghdad.

There is the insidious problem of cluster munitions that fail to explode as designed and remain as active duds, like landmines, until they are triggered by whoever comes into contact with them. Often it is an unsuspecting child, or a farmer. We saw that recently in Lebanon, and in Laos people are still being killed and maimed by U.S. cluster munitions left from the Vietnam War.

Current law prohibits U.S. sales, exports and transfers of cluster munitions that have a failure rate exceeding 1 percent. That law also requires any sale, export or transfer agreement to include a requirement that the cluster munitions will be used only against military targets and not in areas where civilians are known to be present.

Last year, the Pentagon announced that it would meet the failure rate requirement for U.S. use of cluster munitions in 2018. While a step forward, I do not believe we can justify continuing to use weapons that so often fail, so often kill and injure civilians, and which many of our allies have renounced. That is not the kind of leadership the world needs and expects from the United States.

Senator FEINSTEIN's and my bill would apply similar restrictions to the use of cluster munitions beginning immediately on the date of enactment. However, the bill does permit the President to waive the 1 percent requirement if he certifies that it is vital to protect the security of the United States. I urge the Pentagon to work with us by supporting this reasonable step.

I want to express my appreciation to all nations that have signed the treaty, and urge the Obama administration to review its policy on cluster munitions with a view toward putting the U.S. on a path to join the treaty as soon as possible. In the meantime, our legislation would go a long way toward putting the United States on that path.

There are some who dismissed the Cluster Munitions Convention as a pointless exercise, since it does not yet have the support of the United States and other major powers such as Russia, China, Pakistan, India, and Israel. These are some of the same critics of

the Ottawa treaty banning anti-personnel landmines, which the U.S. and the other countries I named have also refused to sign. But that treaty has dramatically reduced the number of landmines produced, used, sold and stockpiled, and the number of mine victims has fallen sharply. Any government that contemplates using landmines today does so knowing that it will be condemned by the international community. I suspect it is only a matter of time before the same is true for cluster munitions.

It is important to note that the U.S. today has the technological ability to produce cluster munitions that would not be prohibited by the treaty. What is lacking is the political will to expend the necessary resources. There is no other excuse for continuing to use cluster munitions that cause unacceptable harm to civilians. I am committed to working in the Defense Appropriations Subcommittee to help secure the resources needed to make this new technology available.

I want to commend Senator FEINSTEIN who has shown real passion and persistence in raising this issue and seeking every opportunity to protect civilians from these indiscriminate weapons.

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. FEINGOLD, Mr. WHITEHOUSE, and Mrs. MCCASKILL):

S. 417. A bill to enact a safe, fair, and responsible state secrets privilege Act; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I am introducing the bipartisan State Secrets Protection Act. I am pleased that Senator KENNEDY, who had so much to do with developing this proposal last Congress is an original cosponsor of the bill along with Senators SPECTER, FEINGOLD, WHITEHOUSE and MCCASKILL. After a lengthy debate, this bill was reported by the Judiciary Committee last April.

The State secrets privilege is a common law doctrine that the Government can claim in court to prevent evidence that could harm national security from being publicly revealed. During the Bush administration, the State secrets privilege was used to avoid judicial review and skirt accountability by ending cases without consideration of the merits. It was used to stymie litigation at its very inception in cases alleging egregious Government misconduct, such as extraordinary rendition and warrantless eavesdropping on the communications of Americans.

The 2006 case of Khaled El-Masri, who was kidnapped and transported against his will to Afghanistan, where he was detained and tortured as part of the Bush administration's extraordinary rendition program, is one such example. He sued the government alleging unlawful detention and treatment. A district court judge dismissed the entire lawsuit after the Government invoked the State secrets privilege, sole-

ly on the basis of an ex parte declaration from the Director of the Central Intelligence Agency, and despite the fact that the Government had admitted that the rendition program exists. Mr. El-Masri has no other remedy. Our justice system is off limits to him, and no judge ever reviewed any of the actual evidence.

The State secrets privilege serves important goals where properly invoked. But there are serious consequences for litigants and for the American public when the privilege is used to terminate litigation alleging serious Government misconduct. For the aggrieved parties, it means that the courthouse doors are closed forever regardless of the severity of their injury. They will never have their day in court. For the American public, it means less accountability, because there will be no judicial scrutiny of improper actions of the executive, and no check or balance.

The State Secrets Protection Act will help guide the courts to balance the Government's interests in secrecy with accountability and the rights of citizens to seek judicial redress. The bill does not restrict the Government's ability to assert the privilege in appropriate cases. Rather, the bill would allow judges to look at the actual evidence the Government submits so that they, neutral judges, rather than self-interested executive branch officials, would render the ultimate decision whether the State secrets privilege should apply. This is consistent with the procedure for other privileges recognized in our courts.

We held a Committee hearing on this issue last year, and the appropriate use of this privilege remains an area of concern for me and for the cosponsors of this bill. In light of the pending cases where this privilege has been invoked, involving issues including torture, rendition and warrantless wiretapping, we can ill-afford to delay consideration of this important legislation. I hope all Senators will join us in supporting this bill.

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

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

S. 417

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "State Secrets Protection Act".

#### SEC. 2. STATE SECRETS PROTECTION.

(a) IN GENERAL.—Title 28 of the United States Code is amended by adding after chapter 180, the following:

#### "CHAPTER 181—STATE SECRETS PROTECTION

"Sec.

"4051. Definitions.

"4052. Rules governing procedures related to this chapter.

"4053. Procedures for answering a complaint.

"4054. Procedures for determining whether evidence is protected from disclosure by the state secrets privilege.

“4055. Procedures when evidence protected by the state secrets privilege is necessary for adjudication of a claim or counterclaim.

“4056. Interlocutory appeal.

“4057. Security procedures.

“4058. Reporting.

“4059. Rule of construction.

#### “§ 4051. Definitions

“In this chapter—

“(1) the term ‘evidence’ means any document, witness testimony, discovery response, affidavit, object, or other material that could be admissible in court under the Federal Rules of Evidence or discoverable under the Federal Rules of Civil Procedure; and

“(2) the term ‘state secret’ refers to any information that, if disclosed publicly, would be reasonably likely to cause significant harm to the national defense or foreign relations of the United States.

#### “§ 4052. Rules governing procedures related to this chapter

“(a) DOCUMENTS.—A Federal court—

“(1) shall determine which filings, motions, and affidavits, or portions thereof, submitted under this chapter shall be submitted ex parte;

“(2) may order a party to provide a redacted, unclassified, or summary substitute of a filing, motion, or affidavit to other parties; and

“(3) shall make decisions under this subsection taking into consideration the interests of justice and national security.

“(b) HEARINGS.—

“(1) IN CAMERA HEARINGS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), all hearings under this chapter shall be conducted in camera.

“(B) EXCEPTION.—A court may not conduct a hearing under this chapter in camera based on the assertion of the state secrets privilege if the court determines that the hearing relates only to a question of law and does not present a risk of revealing state secrets.

“(2) EX PARTE HEARINGS.—A Federal court may conduct hearings or portions thereof ex parte if the court determines, following in camera review of the evidence, that the interests of justice and national security cannot adequately be protected through the measures described in subsections (c) and (d).

“(3) RECORD OF HEARINGS.—The court shall preserve the record of all hearings conducted under this chapter for use in the event of an appeal. The court shall seal all records to the extent necessary to protect national security.

“(c) ATTORNEY SECURITY CLEARANCES.—

“(1) IN GENERAL.—A Federal court shall, at the request of the United States, limit participation in hearings conducted under this chapter, or access to motions or affidavits submitted under this chapter, to attorneys with appropriate security clearances, if the court determines that limiting participation in that manner would serve the interests of national security. The court may also appoint a guardian ad litem with the necessary security clearances to represent any party for the purposes of any hearing conducted under this chapter.

“(2) STAYS.—During the pendency of an application for security clearance by an attorney representing a party in a hearing conducted under this chapter, the court may suspend proceedings if the court determines that such a suspension would serve the interests of justice.

“(3) COURT OVERSIGHT.—If the United States fails to provide a security clearance necessary to conduct a hearing under this chapter in a reasonable period of time, the court may review in camera and ex parte the reasons of the United States for denying or delaying the clearance to ensure that the

United States is not withholding a security clearance from a particular attorney or class of attorneys for any reason other than protection of national security.

“(d) PROTECTIVE ORDERS.—A Federal court may issue a protective order governing any information or evidence disclosed or discussed at any hearing conducted under this chapter if the court determines that issuing such an order is necessary to protect national security.

“(e) OPINIONS AND ORDERS.—Any opinions or orders issued under this chapter may be issued under seal or in redacted versions if, and to the extent that, the court determines that such measure is necessary to protect national security.

“(f) SPECIAL MASTERS.—A Federal court may appoint a special master or other independent advisor who holds the necessary security clearances to assist the court in handling a matter subject to this chapter.

#### “§ 4053. Procedures for answering a complaint

“(a) INTERVENTION.—The United States may intervene in any civil action in order to protect information the Government determines may be subject to the state secrets privilege.

“(b) IMPERMISSIBLE AS GROUNDS FOR DISMISSAL PRIOR TO HEARINGS.—Except as provided in section 4055, the state secrets privilege shall not constitute grounds for dismissal of a case or claim. If a motion to dismiss or for summary judgment is based in whole or in part on the state secrets privilege, or may be affected by the assertion of the state secrets privilege, a ruling on that motion shall be deferred pending completion of the hearings provided under this chapter, unless the motion can be granted on grounds unrelated to, and unaffected by, the assertion of the state secrets privilege.

“(c) PLEADING STATE SECRETS.—In answering a complaint, if the United States or an officer or agency of the United States is a party to the litigation, the United States may plead the state secrets privilege in response to any allegation in any individual claim or counterclaim if the admission or denial of that allegation in that individual claim or counterclaim would itself divulge a state secret to another party or the public. If the United States has intervened in a civil action, it may assert the state secrets privilege in response to any allegation in any individual claim or counterclaim if the admission or denial by a party of that allegation in that individual claim or counterclaim would itself divulge a state secret to another party or the public. No adverse inference or admission shall be drawn from a pleading of state secrets in an answer to an item in a complaint.

“(d) SUPPORTING AFFIDAVIT.—In each instance in which the United States asserts the state secrets privilege in response to 1 or more claims, it shall provide the court with an affidavit signed by the head of the executive branch agency with responsibility for, and control over, the asserted state secrets explaining the factual basis for the assertion of the privilege and attesting that personal consideration was given to the assertion of the privilege. The duties of the head of an executive branch agency under this subsection may not be delegated.

#### “§ 4054. Procedures for determining whether evidence is protected from disclosure by the state secrets privilege

“(a) ASSERTING THE STATE SECRETS PRIVILEGE.—The United States may, in any civil action to which the United States is a party or in any other civil action before a Federal or State court, assert the state secrets privilege as a ground for withholding information or evidence in discovery or for preventing

the disclosure of information through court filings or through the introduction of evidence.

“(b) SUPPORTING AFFIDAVIT.—In each instance in which the United States asserts the state secrets privilege with respect to an item of information or evidence, the United States shall provide the court with an affidavit signed by the head of the executive branch agency with responsibility for, and control over, the state secrets involved explaining the factual basis for the claim of privilege. The United States shall make public an unclassified version of the affidavit.

“(c) HEARING.—A Federal court shall conduct a hearing, consistent with the requirements of section 4052, to examine the items of evidence that the United States asserts are subject to the state secrets privilege, as well as any affidavit submitted by the United States in support of any assertion of the state secrets privilege, and to determine the validity of any assertion of the state secrets privilege made by the United States.

“(d) REVIEW OF EVIDENCE.—

“(1) SUBMISSION OF EVIDENCE.—In addition to the affidavit provided under subsection (b), and except as provided in paragraph (2) of this subsection, the United States shall make all evidence the United States claims is subject to the state secrets privilege available for the court to review, consistent with the requirements of section 4052, before any hearing conducted under this section.

“(2) SAMPLING IN CERTAIN CASES.—If the volume of evidence the United States asserts is protected by the state secrets privilege precludes a timely review of each item of evidence, or the court otherwise determines that a review of all of that evidence is not feasible, the court may substitute a sufficient sampling of the evidence if the court determines that there is no reasonable possibility that review of the additional evidence would change the determination on the privilege claim and the evidence reviewed is sufficient to enable to court to make the determination required under this section.

“(3) INDEX OF MATERIALS.—The United States shall provide the court with a manageable index of evidence it contends is subject to the state secrets privilege by formulating a system of itemizing and indexing that would correlate statements made in the affidavit provided under subsection (b) with portions of the evidence the United States asserts is subject to the state secrets privilege. The index shall be specific enough to afford the court an adequate foundation to review the basis of the invocation of the privilege by the United States.

“(e) DETERMINATIONS AS TO APPLICABILITY OF STATE SECRETS PRIVILEGE.—

“(1) IN GENERAL.—Except as provided in subsection (d)(2), as to each item of evidence that the United States asserts is protected by the state secrets privilege, the court shall review, consistent with the requirements of section 4052, the specific item of evidence to determine whether the claim of the United States is valid. An item of evidence is subject to the state secrets privilege if it contains a state secret, or there is no possible means of effectively segregating it from other evidence that contains a state secret.

“(2) ADMISSIBILITY AND DISCLOSURE.—

“(A) PRIVILEGED EVIDENCE.—If the court agrees that an item of evidence is subject to the state secrets privilege, that item shall not be disclosed or admissible as evidence.

“(B) NON-PRIVILEGED EVIDENCE.—If the court determines that an item of evidence is not subject to the state secrets privilege, the state secrets privilege does not prohibit the disclosure of that item to the opposing party or the admission of that item at trial, subject to the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

“(3) STANDARD OF REVIEW.—The court shall give substantial weight to an assertion by the United States relating to why public disclosure of an item of evidence would be reasonably likely to cause significant harm to the national defense or foreign relations of the United States. The court shall weigh the testimony of a Government expert in the same manner as the court weighs, and along with, any other expert testimony in the applicable case.

“(f) NON-PRIVILEGED SUBSTITUTE.—If the court finds that material evidence is subject to the state secrets privilege and it is possible to craft a non-privileged substitute for that privileged material evidence that provides a substantially equivalent opportunity to litigate the claim or defense as would that privileged material evidence, the court shall order the United States to provide such a substitute, which may consist of—

“(1) a summary of such privileged information;

“(2) a version of the evidence with privileged information redacted;

“(3) a statement admitting relevant facts that the privileged information would tend to prove; or

“(4) any other alternative as directed by the court in the interests of justice and protecting national security.

“(g) REFUSAL TO PROVIDE NON-PRIVILEGED SUBSTITUTE.—In a suit against the United States or an officer or agent of the United States acting in the official capacity of that officer or agent, if the court orders the United States to provide a non-privileged substitute for evidence in accordance with this section, and the United States fails to comply, the court shall resolve the disputed issue of fact or law to which the evidence pertains in the non-government party's favor.

**“§ 4055. Procedures when evidence protected by the state secrets privilege is necessary for adjudication of a claim or counterclaim**

“After reviewing all pertinent evidence, privileged and non-privileged, a Federal court may dismiss a claim or counterclaim on the basis of the state secrets privilege only if the court determines that—

“(1) it is impossible to create for privileged material evidence a non-privileged substitute under section 4054(f) that provides a substantially equivalent opportunity to litigate the claim or counterclaim as would that privileged material evidence;

“(2) dismissal of the claim or counterclaim would not harm national security; and

“(3) continuing with litigation of the claim or counterclaim in the absence of the privileged material evidence would substantially impair the ability of a party to pursue a valid defense to the claim or counterclaim.

**“§ 4056. Interlocutory appeal**

“(a) IN GENERAL.—The courts of appeal shall have jurisdiction of an appeal by any party from any interlocutory decision or order of a district court of the United States under this chapter.

“(b) APPEAL.—

“(1) IN GENERAL.—An appeal taken under this section either before or during trial shall be expedited by the court of appeals.

“(2) DURING TRIAL.—If an appeal is taken during trial, the district court shall adjourn the trial until the appeal is resolved and the court of appeals—

“(A) shall hear argument on appeal as expeditiously as possible after adjournment of the trial by the district court;

“(B) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

“(C) shall render its decision as expeditiously as possible after argument on appeal; and

“(D) may dispense with the issuance of a written opinion in rendering its decision.

**“§ 4057. Security procedures**

“(a) IN GENERAL.—The security procedures established under the Classified Information Procedures Act (18 U.S.C. App.) by the Chief Justice of the United States for the protection of classified information shall be used to protect against unauthorized disclosure of evidence protected by the state secrets privilege.

“(b) RULES.—The Chief Justice of the United States, in consultation with the Attorney General, the Director of National Intelligence, and the Secretary of Defense, may create additional rules or amend the rules to implement this chapter and shall submit any such additional rules or amendments to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate. Any such rules or amendments shall become effective 90 days after such submission, unless Congress provides otherwise. Rules and amendments shall comply with the letter and spirit of this chapter, and may include procedures concerning the role of magistrate judges and special masters in assisting courts in carrying out this chapter. The rules or amendments under this subsection may include procedures to ensure that a sufficient number of attorneys with appropriate security clearances are available in each of the judicial districts of the United States to serve as guardians ad litem under section 4052(c)(1).

**“§ 4058. Reporting**

“(a) ASSERTION OF STATE SECRETS PRIVILEGE.—

“(1) IN GENERAL.—The Attorney General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on any case in which the United States asserts the state secrets privilege, not later than 30 calendar days after the date of such assertion.

“(2) CONTENTS.—Each report submitted under this subsection shall include any affidavit filed in support of the assertion of the state secrets privilege and the index required under section 4054(d)(2).

“(3) EVIDENCE.—Upon a request by any member of the Permanent Select Committee on Intelligence or the Committee on the Judiciary of the House of Representatives or the Select Committee on Intelligence or the Committee on the Judiciary of the Senate, the Attorney General shall provide to that member any item of evidence relating to which the United States has asserted the state secrets privilege.

“(4) PROTECTION OF INFORMATION.—An affidavit, index, or item of evidence provided under this subsection may be included in a classified annex or provided under any other appropriate security measures.

“(b) OPERATION AND EFFECTIVENESS.—

“(1) IN GENERAL.—The Attorney General shall deliver to the committees of Congress described in subsection (a) a report concerning the operation and effectiveness of this chapter and including suggested amendments to this chapter.

“(2) DEADLINE.—The Attorney General shall submit a report under paragraph (1) not later than 1 year after the date of enactment of this chapter, and every year thereafter until the date that is 3 years after that date of enactment. After the date that is 3 years after that date of enactment, the Attorney General shall submit a report under paragraph (1) as necessary.

**“§ 4059. Rule of construction**

“Nothing in this chapter—

“(1) is intended to supersede any further or additional limit on the state secrets privilege under any other provision of law; or

“(2) may be construed to preclude a court from dismissing a claim or counterclaim or entering judgment on grounds unrelated to, and unaffected by, the assertion of the state secrets privilege.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

181. State secrets protection ..... 4051  
**SEC. 3. SEVERABILITY.**

If any provision of this Act, any amendment made by the Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the amendments made by the Act, and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**SEC. 4. APPLICATION TO PENDING CASES.**

The amendments made by this Act shall apply to any civil case pending on or after the date of enactment of this Act.

Mr. FEINGOLD. Mr. President, I am proud to join Senators LEAHY, SPECTER, and KENNEDY in introducing the State Secrets Protection Act of 2009. This bill establishes uniform procedures for courts to use when evaluating governmental assertions of the state secrets privilege in civil litigation. It takes an important step toward restoring the rule of law by ensuring that the privilege will be used only to protect true state secrets, and not as a means for the Government to avoid accountability for its actions.

In a democracy, the public should have the right to know what its government is doing. That should be the rule, and secrecy should be the rare exception, reserved for the very few cases in which the national security is truly at stake. Unfortunately, the Bush administration stood that presumption on its head, cloaking its actions in secrecy whenever possible and grudgingly submitting to public scrutiny only when it couldn't be avoided. The “state secrets” privilege was a favorite weapon in that administration's arsenal of secrecy.

None of us disputes that information may properly be withheld as a “state secret” when disclosing the information would cause grave damage to national security. The problem arises when the privilege is abused and invoked to shield Government wrongdoing. Indeed, that is exactly what happened the first time the Supreme Court recognized the privilege in 1953, in the case of *United States v. Reynolds*. The Government had been sued after a military aircraft crash killed nine people, and it invoked the “state secrets” privilege to shield an internal investigative report. Decades later, when the report was declassified, it revealed nothing that could fairly be characterized as a “state secret” but it did reveal faulty maintenance of the aircraft.

Abuses like these can be prevented, but only if the courts fulfill their responsibility to carefully review claims



of privilege. In the Reynolds case, no court actually looked at the supposedly privileged report. That simple step would have prevented the miscarriage of justice that ensued. Yet, despite the fact that courts have the acknowledged authority to order in camera review of the evidence, fewer than one third of courts have actually exercised that option when the Government has asserted the "state secrets" privilege. And a host of other tools available to the courts to evaluate and respond to claims of privilege have been employed inconsistently at best, resulting in a confused body of case law that preserves accountability in some cases while granting the government a "get out of jail free" card in others.

In the last Congress, Senators KENNEDY, SPECTER, and LEAHY introduced the State Secrets Protection Act to standardize the procedures courts use in cases where the Government asserts the "state secrets" privilege and to ensure adequate scrutiny of such claims. The bill was reported by the Judiciary Committee last April after extensive debate. Much of the credit for this legislation goes to Senator KENNEDY, whose unflinching commitment to the rule of law inspired both the concept and the particulars of this bill. I had the honor of working with him to develop this legislation, and it is a pleasure now to cosponsor its reintroduction, with Senator LEAHY as the lead sponsor.

The bill makes use of existing tools that are available to the courts when handling national security information. Perhaps the most fundamental of these is in camera review of the allegedly privileged evidence, which the bill requires. The idea here is simple: Determining what information the evidence contains is the threshold step in determining whether that evidence is privileged. This step is far too important to be left to a party with a built-in conflict of interest. Just as a court would never accept a private litigant's description of his or her evidence in lieu of the evidence itself, the court should not rely solely on the Government's description of the evidence when the Government has a clear interest in the outcome of the case.

That courts may examine sensitive national security information in camera is beyond any serious dispute. Since 1974, the Freedom of Information Act has allowed courts to engage in in camera review of any records that the Government claims are exempt from disclosure under the Act. Courts have also reviewed the most sensitive national security information in criminal cases, pursuant to the Classified Information Procedures Act. In fact, courts handle highly classified information on a regular basis. There is no legitimate justification for skipping this crucial step.

The bill also requires courts to hold in camera hearings on the question of whether the evidence is privileged. Based on the court's previous review of

the evidence, the court may conduct the hearing *ex parte* i.e., without any participation by the plaintiff or the plaintiff's lawyers but only if the court finds that national security cannot adequately be protected through other means. For example, the court may limit attendance at the hearing to attorneys with the requisite clearances, or the court may appoint a guardian ad litem to represent the plaintiff's interests at the hearing. The bill thus preserves the adversarial process to the maximum extent consistent with protecting national security.

That's important, for at least two reasons. First, our justice system is premised on the notion of fairness, and that principle of fairness is undermined any time a party to litigation is excluded from the proceedings. But fairness isn't the only principle at stake. For all its complications and occasional inefficiencies, the adversarial process remains the best system for getting to the truth. If only one party is present at the hearing, the court is more likely to reach the wrong result it's as simple as that.

Taken together, the requirements of in camera review of the evidence and an in camera hearing ensure that the Government's claim of privilege is evaluated fairly and thoroughly. A fair, thorough review is necessary, because the bill makes absolutely clear that once evidence is found to be privileged, it cannot be disclosed, however great the plaintiff's need for the evidence may be. The interest of national security, once the court determines that interest is truly at stake, is given absolute protection.

That may mean the end of the lawsuit but it may not. As Congress recognized when it passed the Classified Information Procedures Act, courts have many tools at their disposal to move litigation forward even when some of the evidence cannot be disclosed. For example, courts can require the Government to submit non-privileged substitutes for the privileged evidence, such as summaries of the evidence, redacted versions, or admissions of certain facts. Under the bill, where the court finds that it would be feasible for the Government to craft a non-privileged substitute for privileged evidence, it may order the Government to do so. Again, however, the court can never compel the production of privileged evidence. If the Government refuses to craft a non-privileged substitute, the remedy is the same one that exists in the CIPA: the court may resolve the relevant issue of fact or law against the Government.

The bill does not allow courts to dismiss lawsuits at the pleadings stage based on a claim of "subject matter privilege." As the Fourth Circuit has explained, "subject matter privilege" applies if the case is so pervaded with state secrets, it would be impossible to conduct the lawsuit without revealing them. Such cases undoubtedly exist. But until all of the relevant evidence is

identified and the privilege determinations are made, any conclusion that a case will be pervaded with state secrets is simply a prediction. Only by proceeding through discovery and pre-trial hearings can that prediction be replaced with certainty. And this can be done without revealing a single state secret, since the bill allows privilege determinations to be made in camera and *ex parte*.

The bill does not change the ordinary rules of summary judgment. If a court determines, after discovery and pre-trial hearings are completed, that the key evidence is privileged and the plaintiff cannot prove his or her case using non-privileged evidence, then the Government may move for summary judgment and prevail. The bill thus retains the concept of "subject matter privilege" it simply requires a more thorough testing of the claim.

Nor does the bill ever put the Government to the "Hobson's choice" of either revealing privileged evidence or conceding the lawsuit. Under the bill, even if the plaintiff has made out a *prima facie* case, the court can and must dismiss the lawsuit if the Government would need to disclose privileged evidence in order to present a valid defense. The Government's interests, as well as the national security, are thus scrupulously protected.

Finally, the bill facilitates congressional oversight by requiring the executive branch to share with the Judiciary and Intelligence Committees the documents it makes available to the courts: the Government affidavit explaining why the evidence is privileged, the index of privileged evidence, and, where requested, the evidence itself. This information will help Congress monitor the Government's use of the privilege and assess the need for any further legislation.

Perhaps even more important, it will provide a means of accountability in those cases where the privilege prevents a court from ruling on allegations of Government wrongdoing. The idea of simply letting such allegations go unaddressed should be profoundly troubling to anyone who respects the rule of law yet for eight years, the response of the Bush administration was little more than a shrug. This bill rejects such a cavalier attitude toward the rule of law. The citizens of this country should never again be told that there is simply no remedy for wrongs their Government has committed. In cases where the courts cannot provide that remedy, then Congress should step in and providing the necessary information to the relevant committees of Congress will enable that to happen.

I am pleased that both the new Attorney General, Eric Holder, and the nominee for Associate Attorney General, Thomas Perrelli, have indicated a willingness to review this bill and work with us on it. I hope that it will be possible to fashion legislation that the Administration can support. The public

deserves to have confidence that the state secrets privilege is not going to be used to cover up Government misconduct. This bill provides the courts a system for resolving claims of privilege that will inspire that confidence.

A country where the Government need not answer to allegations of wrongdoing is a country that has strayed dangerously far from the rule of law. We must ensure that the "state secrets" privilege does not become a license for the Government to evade the laws that we pass. This bill accomplishes that goal, while simultaneously providing the strongest of protections to those items of evidence that truly qualify as state secrets. I urge all of my colleagues to support the rule of law by supporting this legislation.

By Ms. KLOBUCHAR (for herself and Mr. HATCH):

S. 418. A bill to require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HATCH. Mr. President, I rise today to introduce with my friend from Minnesota, Senator AMY KLOBUCHAR, the Secondary Metal Theft Prevention Act of 2009.

Once again, I am partnering with Senator KLOBUCHAR to combat metal theft in our country. Last Congress we introduced the Copper Theft Prevention Act of 2008, S. 3666, which focused solely on copper theft. Since then, after a series of meetings with industry stakeholders, we concluded that the bill would be more effective if it were expanded to address secondary metal thefts, including those involving copper.

There is no doubt that we are living in difficult economic times. As we witness the unfortunate job losses spreading across the country, I am mindful of those who are struggling to make ends meet. Unfortunately some, motivated by quick profits and a variety of vulnerable targets, are engaging in the fast-growing crime of metal theft.

On the surface, stealing precious metal, like copper, appears to be a relatively small theft. However, metal thieves compromise U.S. critical infrastructure by targeting electrical substations, cellular towers, telephone land lines, railroads, water wells, construction sites, and vacant homes—all for fast cash.

Some argue that there is no need for this legislation because metal is being traded at low prices. I disagree. As we know, the market shifts and prices will eventually increase as demand surges. Moreover, law enforcement officials confirm that thieves are only stealing more metal to offset current metal prices.

On September 15, 2008, the Federal Bureau of Investigation released an unclassified intelligence assessment enti-

tled, *Copper Thefts Threaten U.S. Critical Infrastructure*.

This assessment states that "thieves are typically individuals or organized groups who operate independently or in loose association with each other and commit thefts in conjunction with fencing activities and the sale of contraband. Organized groups of drug addicts, gang members, and metal thieves are conducting large scale thefts from electric utilities, warehouses, foreclosed and vacant properties, and oil well sites for tens of thousands of dollars in illicit proceeds per month."

I am mindful of the hardworking scrap metal dealers in my home state. Recycling secondary metal not only generates revenue but is environmentally friendly and saves energy, it takes a lot less energy to melt down secondary metal and recycle it than it does to produce new metal.

Take for example the City Creek project in downtown Salt Lake City, Utah. It is my understanding that when the construction contractors tore down the downtown malls to make way for the 20-acre retail-office-residential complex, more than half of what came down was reused either in the City Creek development or somewhere else. Steel frames were sold as scrap metal, which was recycled and used for other purposes.

Utah metal recyclers deal with hundreds of people and thousands of pounds of metal on a regular basis. I imagine in some cases it is difficult to tell if the scrap metal is stolen, especially if a customer has, what appears to be, a legitimate story. I know that many of Utah's scrap metal dealers are not turning a blind eye to this problem. In fact, several metal recycling companies have partnered with local law enforcement and use a theft alert system to warn and watch for reported stolen items. I commend them for their efforts and hope that police, prosecutors, and members of the metal recycling industry continue to communicate and work together to combat metal theft along the Wasatch Front.

Yet on the Federal level, we need a baseline from which all states must operate. This is important because many states in the Union do not have metal theft laws and lure thieves across State lines. It should be noted that the proposed bill does not preempt states from enacting their own laws.

I believe the proposed legislation will help tighten-up how secondary metal transactions are performed across the country and, in return, send a clear message that metal theft will be met with serious consequences. The bill calls for enforcement by the Federal Trade Commission and gives state attorneys general the ability to bring a civil action to enforce the provisions of the legislation.

This bill also contains a "Do Not Buy" provision wherein specific items listed cannot be purchased by scrap metal dealers unless sellers establish, by written documentation, that they

are authorized to sell the secondary metal in question.

Additionally, the bill requires scrap metal dealers to keep records of secondary metal purchases, including the name and address of the seller, the date of the transaction, the quantity and description of the secondary metal being purchased, an identifying number from a driver's license or other government-issued identification and, where possible, the make, model and tag number of the vehicle used to deliver the metal to the dealer.

Secondary metal dealers must maintain these records for a minimum of two years from the date of the transaction and make them available to law enforcement agencies for use in tracking down and prosecuting secondary metal theft crimes.

There is real concern about how easy it is to access cash in scrap metal transactions. For this reason, the bill requires that checks will be the method of payment for transactions over \$75. While that may sound low for some, it is important to recognize that it takes a lot of secondary metal to obtain even \$75 in return.

To discourage multiple cash transactions from one seller, the bill limits metal dealers from paying cash to the same seller within a 48-hour period. The intent of this provision is not to be a hardship on the honest seller. The purpose is to dissuade some sellers from going around the bill's check payment requirement by making multiple cash transactions. Again, we must remove the incentives for thieves to access fast cash.

I am aware that some scrap metal dealers do not want to issue checks for fear of check fraud or additional transactional costs. Senator KLOBUCHAR and I have given careful consideration to these concerns and have consulted law enforcement officials to determine how best to proceed. We believe that checks are a valuable benefit to law enforcement because they provide trace evidence by creating a paper trail, a signature, and possibly even a fingerprint.

Let me conclude my remarks by saying that considering our country's serious economic situation, I believe we need to ensure that our critical infrastructure is not viewed as a treasure trove for desperate metal thieves.

I am committed to moving this bill forward and hope that my colleagues will join me in perfecting this bill as it moves through the legislative process.

Mr. President, I ask unanimous consent that the support material be printed in the RECORD.

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

COPPER THEFTS THREATEN US CRITICAL  
INFRASTRUCTURE  
SCOPE NOTE

The assessment highlights copper theft and its impact on US critical infrastructure. Copper thefts are occurring throughout the United States and are perpetrated by individuals and organized groups motivated by

quick profits and a variety of vulnerable targets. Information for the assessment was developed through May 2008 from the following sources: FBI and Open sources.

#### SOURCE AND CONFIDENCE STATEMENT

Reporting relative to the impact of copper thefts on US critical infrastructure was derived from the FBI and open sources. The FBI has high confidence that the FBI source reporting used to prepare the assessment is reliable. The FBI also has high confidence in the reliability of information derived from open-source reporting.

#### KEY JUDGMENTS

Copper thieves are threatening US critical infrastructure by targeting electrical substations, cellular towers, telephone land lines, railroads, water wells, construction sites, and vacant homes for lucrative profits. The theft of copper from these targets disrupts the flow of electricity, telecommunications, transportation, water supply, heating, and security and emergency services and presents a risk to both public safety and national security.

Copper thieves are typically individuals or organized groups who operate independently or in loose association with each other and commit thefts in conjunction with fencing activities and the sale of contraband. Organized groups of drug addicts, gang members, and metal thieves are conducting large scale thefts from electric utilities, warehouses, foreclosed or vacant properties, and oil well sites for tens of thousands of dollars in illicit proceeds per month.

The demand for copper from developing nations such as China and India is creating a robust international copper trade. Copper thieves are exploiting this demand and the resulting price surge by stealing and selling the metal for high profits to recyclers across the United States. As the global supply of copper continues to tighten, the market for illicit copper will likely increase.

#### COPPER THEFTS THREATEN US CRITICAL INFRASTRUCTURE

Copper thieves are threatening US critical infrastructure by targeting electrical substations, cellular towers, telephone land lines, railroads, water wells, construction sites, and vacant homes for lucrative profits. Copper thefts from these targets have increased since 2006; and they are currently disrupting the flow of electricity, telecommunications, transportation, water supply, heating, and security and emergency services, and present a risk to both public safety and national security.

According to open-source reporting, on 4 April 2008, five tornado warning sirens in the Jackson, Mississippi, area did not warn residents of an approaching tornado because copper thieves had stripped the sirens of copper wiring, thus rendering them inoperable.

According to open-source reporting, on 20 March 2008, nearly 4,000 residents in Polk County, Florida, were left without power after copper wire was stripped from an active transformer at a Tampa Electric Company (TECO) power facility. Monetary losses to TECO were approximately \$500,000.

According to agricultural industry reporting, as of March 2007, farmers in Pinal County, Arizona, were experiencing a copper theft epidemic as perpetrators stripped copper from their water irrigation wells and pumps resulting in the loss of crops and high replacement costs. Pinal County's infrastructure loss due to copper theft was \$10 million.

#### CRIMINAL GROUPS INVOLVED IN COPPER THEFTS

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nized groups of drug addicts, gang members, and metal thieves are conducting large scale thefts from electric utilities, warehouses, foreclosed and vacant properties, and oil well sites for tens of thousands of dollars in illicit proceeds per month.

According to open sources, as recently as April 2008, highly organized theft rings specializing in copper theft from houses and warehouses were operating in Minneapolis, Minnesota. These rings or gangs hit several houses per day, yielding more than \$20,000 in profits per month. The targets were most often foreclosed homes.

Open-source reporting from March 2008 indicates that an organized copper theft ring used the Cuyahoga County Sheriff's foreclosure lists to pinpoint targets in Cleveland, Ohio. Perpetrators had 200 pounds of stolen copper in their van, road maps, and tools. Three additional perpetrators were found to be using the US Department of Housing and Urban Development's list of mortgage and bank foreclosures to target residences in Cleveland, South Euclid, Cleveland Heights, and other cities in Ohio.

#### GLOBAL DEMAND INCREASING

China, India, and other developing nations are driving the demand for raw materials such as copper and creating a robust international trade. Copper thieves are receiving cash from recyclers who often fill orders for commercial scrap dealers. Recycled copper flows from these dealers to smelters, mills, foundries, ingot makers, powder plants, and other industries to be re-used in the United States or for supplying the international raw materials demand. As the global supply of copper continues to tighten, the market for illicit copper will likely increase.

Open-source reporting from February 2007 indicates that the global copper supply tightened due to a landslide at the Freeport-McMoran Copper and Gold mine in Grasberg, Indonesia in October 2003 and a worker's strike at the El Abra copper mine in Clama, Chile in November 2004. These events contributed to copper production shortfalls and led to an increase in recycling, which in turn created a market for copper.

Open-source reporting from October 2006 indicated that the demand for copper from China increased substantially due to the construction of facilities for the 2008 Olympics.

Open-source reporting indicated that from January 2001 to March 2008, the price of copper increased more than 500 percent. This has prompted unscrupulous and sometimes unwitting independent and commercial scrap metal dealers to pay record prices for copper, regardless of its origin, making the material a more attractive target for theft.

#### OUTLOOK

The global demand for copper, combined with the economic and home foreclosure crisis, is creating numerous opportunities for copper-theft perpetrators to exploit copper-rich targets. Organized copper theft rings may increasingly target vacant or foreclosed homes as they are a lucrative source of untended copper inventory. Current economic conditions, such as the rising cost of gasoline, food, and consumer goods, the declining housing market, the ease through which copper is exchanged for cash, and the lack of a significant deterrent effect, make it likely that copper thefts will remain a lucrative financial resource for criminals.

Industry officials have taken some countermeasures to address the copper theft problem. These include the installment of physical and technological security measures, increased collaboration among the various industry sectors, and the development of law enforcement partnerships. Many states are also taking countermeasures by enacting or enhancing legislation regulating

the scrap industry—to include increased recordkeeping and penalties for copper theft and noncompliant scrap dealers. However, there are limited resources available to enforce these laws, and a very small percentage of perpetrators are arrested and convicted. Additionally, as copper thefts are typically addressed as misdemeanors, those individuals convicted pay relatively low fines and serve short prison terms.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 31—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN submitted the following resolution; from the Committee on Energy and Natural Resources; which was referred to the Committee on Rules and Administration:

#### S. RES. 31

*Resolved*, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Energy and Natural Resources is authorized from March 1, 2009, through September 30, 2009; October 1, 2009, through September 30, 2010; and October 1, 2010, through February 28, 2011, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2009, through September 30, 2009, under this resolution shall not exceed \$3,833,400.

(b) For the period October 1, 2009, through September 30, 2010, expenses of the committee under this resolution shall not exceed \$6,740,569.

(c) For the period October 1, 2010, through February 28, 2011, expenses of the committee under this resolution shall not exceed \$2,870,923.

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2011, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.