Air Act to conform the definition of renewable biomass to the definition given the term in the Farm Security and Rural Investment Act of 2002.

S. 639

At the request of Mr. INHOFE, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 639, a bill to amend the definition of commercial motor vehicle in section 31101 of title 49, United States Code, to exclude certain farm vehicles, and for other purposes.

S. 645

At the request of Mrs. LINCOLN, the names of the Senator from Idaho (Mr. RISCH) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 645, a bill to amend title 32, United States Code, to modify the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 654

At the request of Mr. BUNNING, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 654, a bill to amend title XIX of the Social Security Act to cover physician services delivered by podiatric physicians to ensure access by Medicaid beneficiaries to appropriate quality foot and ankle care.

S. 655

At the request of Mr. JOHNSON, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 655, a bill to amend the Pittman-Robertson Wildlife Restoration Act to ensure adequate funding for conservation and restoration of wildlife, and for other purposes.

S. 663

At the request of Mr. NELSON of Nebraska, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 663, a bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to establish the Merchant Mariner Equity Compensation Fund to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 671

At the request of Mrs. LINCOLN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 671, a bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare program, and for other purposes.

S. 683

At the request of Mr. HARKIN, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from California (Mrs. BOXER) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 683, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 701

At the request of Mr. KERRY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 701, a bill to amend title XVIII of the Social Security Act to improve access of Medicare beneficiaries to intravenous immune globulins (IVIG).

S. 714

At the request of Mr. WEBB, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 714, a bill to establish the National Criminal Justice Commission.

S. 731

At the request of Mr. NELSON of Nebraska, the names of the Senator from Alabama (Mr. SESSIONS), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 731, a bill to amend title 10, United States Code, to provide for continuity of TRICARE Standard coverage for certain members of the Retired Reserve.

S. 779

At the request of Mr. LAUTENBERG, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Missouri (Mrs. MCCASKILL) were added as cosponsors of S. 779, a bill to amend titles 23 and 49, United States Code, to modify provisions relating to the length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes.

S. 816

At the request of Mr. CRAPO, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 816, a bill to preserve the rights granted under second amendment to the Constitution in national parks and national wildlife refuge areas.

S. 832

At the request of Mr. NELSON of Florida, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 832, a bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes.

S. 864

At the request of Mr. DORGAN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 864, a bill to amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts for charitable purposes.

S. 869

At the request of Mr. THUNE, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 869, a bill to require the Secretary of the Treasury to use any amounts repaid by a financial institution that is a recipient of assistance under the Troubled Assets Relief Program for debt reduction.

S. CON. RES. 14

At the request of Mrs. LINCOLN, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. CON. RES. 18

At the request of Mr. FEINGOLD, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. Con. Res. 18, a concurrent resolution supporting the goals and ideals of World Malaria Day, and reaffirming United States leadership and support for efforts to combat malaria.

S. RES. 84

At the request of Mr. LEVIN, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Res. 84, a resolution urging the Government of Canada to end the commercial seal hunt.

S. RES. 94

At the request of Mr. AKAKA, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. Res. 94, a resolution designating April 2009 as ''Financial Literacy Month''.

AMENDMENT NO. 996

At the request of Mr. INHOFE, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of amendment No. 996 proposed to S. 386, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

AMENDMENT NO. 1000

At the request of Mrs. BOXER, the names of the Senator from Virginia (Mr. WEBB) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 1000 proposed to S. 386, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

AMENDMENT NO. 1002

At the request of Mr. THUNE, the names of the Senator from Utah (Mr. BENNETT), the Senator from Wyoming (Mr. ENZI) and the Senator from Arizona (Mr. KYL) were added as cosponsors of amendment No. 1002 proposed to S. 386, a bill to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 871. A bill to authorize the Secretary of the Interior to conduct a special resources study of the Honoliuli Internment Camp site in the State of Hawaii, to determine the suitability

and feasibility of establishing a unit of the National Park System; to the Committee on Energy and Natural Resources.

Mr. INOUYE. Mr. President, I rise today to introduce a bill that would authorize the Secretary of the Interior to conduct a Special Resources Study of the Honouliuli Gulch and associated sites located in the State of Hawaii in order to determine the suitability and feasibility of designating these sites as a unit of the National Park System.

During World War II, over 1,000 Japanese Americans were incarcerated in at least eight locations on Hawaii. In a report completed in 2007, the Japanese Cultural Center of Hawaii documented these sites that include Honouliuli Gulch, Sand Island, and the US Immigration Station on Oahu, the Kilauea Military Camp on the Big Island, Haiku Camp and Wailuku County Jail on Maui, and the Kalaheo Stockade and Waialua County Jail on Kauai. These camps also held approximately 100 local residents of German and Italian ancestry.

Those detained included the leaders of the Japanese immigrant community in Hawaii, many of whom were taken from their homes and families in the hours after the attack on Pearl Harbor. The forced removal of these individuals began a nearly four year odyssey to a series of camps in Hawaii and on the continental US. Over 1,000 immediate family members of these men joined their husbands, fathers and relatives in mainland camps. The detainees were never formally charged and granted only token hearings. Many of the detainees' sons served with distinction in the US armed forces, including the legendary 100th Battalion, 442nd Regimental Combat Team and Military Intelligence Service.

This report found that both the Kilauea Military Camp and the Honouliuli sites feature historic resources and recommended that the sites be nominated for listing on the National Register for Historic Places. In 2008, the Japanese Cultural Center of Hawaii published a more detailed archeological reconnaissance of the Honouliuli site. This report found that there were numerous historic features that would qualify the site for National Historic Register and further recommended that the site be conserved. The Japanese Cultural Center of Hawaii is currently working with Monsanto, the landowner, to nominate the Honouliuli Gulch site to be listed on the National Historic Register.

So far I have received letters in support of this legislation from a range of local, regional and national organizations, including the Japanese American National Museum, Hawaiian Historical Society, Go For Broke National Education Center, Japan America Society of Hawaii, Honolulu Chapter of the Japanese Citizens League, Japanese Cultural Center of Hawaii, Honolulu Japanese Junior Chamber of Commerce, MIS Veterans Club of Hawaii, the United Japanese Society of Hawaii, Japanese American Citizens League, The Conservation Fund, Densho, National Trust for Historic Preservation, Japanese American National Heritage Coalition and the Friends of Minidoka.

This legislation will enable the National Park Service to study these important sites in my state and make recommendations to Congress regarding the best approach to conserve and manage these sites to tell this chapter in our Nation's history to current and future generations.

I would urge my colleagues to support this legislation.

By Mr. VOINOVICH:

S. 872. A bill to establish a Deputy Secretary of Homeland Security for Management, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. VOINOVICH. Mr. President, I rise today with my good friend and partner on the Oversight of Government Management Subcommittee, Senator AKAKA, to address the critical management challenges facing the Department of Homeland Security, DHS, by introducing the Effective Homeland Security Management Act of 2009. I am proud to have Senators CARPER and LEVIN also joining us in this important effort.

This legislation would elevate the role and responsibilities of the current DHS Under Secretary for Management to a Deputy Secretary of Homeland Security for Management while preserving the authority of the Secretary and Deputy Secretary of DHS as the first-and second-highest ranking DHS officials, respectively. Under the legislation, the individual appointed as the Deputy Secretary for Management would be the third highest ranking official at DHS and would serve a five year term in order to provide management continuity at DHS during times of leadership transition, such as following a presidential election like the one we just experienced.

In the Homeland Security Act of 2002, Congress established the position of Under Secretary for Management to oversee the management and administration of DHS. However, management issues have persisted at DHS since its creation. In 2003, the Government Accountability Office, GAO, included implementing and transforming DHS on its high-risk list of programs susceptible to waste, fraud, abuse, and mismanagement. Similarly, in December 2005, the DHS Inspector General issued a report warning of major management challenges facing DHS. The report noted that although progress has been made since DHS' inception, ''[i]ntegrating its many separate components in a single, effective, efficient, and economical Department remains one of DHS's biggest challenges.'' Further, DHS's own Performance and Accountability Report, released in November 2006, states that it did not meet its strategic goal of ''providing comprehensive leadership and management to improve the efficiency and effectiveness of the Department,'' further underscoring the need for good management. In 2007, the Homeland Security Advisory Council Culture Task Force Report also detailed persisting organizational challenges within DHS and prescribed leadership and management models designed to empower employees, foster collaboration, and encourage innovation. The third recommendation of the report was that DHS establish an operational leadership position. The report noted, ''[a]lignment and integration of the DHS component organizations is vital to the success of the DHS mission. The [Culture Task Force] believes there is a compelling need for the creation of a Deputy Secretary for Operations, DSO, who would report to the Secretary and be responsible for the high level Department-wide measures aimed at generating and sustaining seamless operational integration and alignment of the component organizations.''

For these reasons, as part of the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress clarified that the role and responsibilities of the Under Secretary for Management would include serving as the Chief Management Officer and principal advisor to the Secretary on the management of DHS. In that legislation Congress also provided that the Under Secretary for Management would be responsible for strategic management and annual performance planning, identification and tracking of performance measures, and the management integration and transformation process in support of DHS operations and programs. The Implementing Recommendations of the 9/11 Commission Act of 2007 also established managerial and leadership qualifications for the Under Secretary for Management and increased the pay scale for that Under Secretary.

However, there continue to be significant management challenges associated with integrating DHS, whose creation represented the single largest restructuring of the Federal Government since the creation of the Department of Defense in 1947. In addition to its complex mission of securing the Nation from terrorism and natural hazards through protection, prevention, response, and recovery, leadership of DHS has the enormous task of unifying 200,000 employees from 22 disparate Federal agencies. This January, GAO again included implementing and transforming DHS on its high-risk list, noting that ''[a]lthough DHS has made progress in transforming into a fully functioning department, this transformation remains high risk because DHS has not yet developed a comprehensive plan to address the transformation, integration, management and mission challenges GAO identified since 2003. . . DHS has developed an Integrated Strategy for High Risk Management that outlines the department's process for, among other things,

assessing risks and proposing initiatives to address challenges, but the strategy lacks details for the transformation of DHS and integration of its management functions. DHS has also developed corrective action plans to address management challenges that contain several of the key elements GAO has identified for a corrective action plan . . . However, the plans generally do not contain measures to gauge performance and progress, nor do they identify the resources needed to carry out the corrective actions identified.''

As former Chairman and now Ranking Member of the Oversight of Government Management Subcommittee, improving the management structure at DHS has been one of my top priorities. The Subcommittee's Chairman, Senator AKAKA, and I have been committed to ensuring that DHS has the proper tools to make continual improvements in its operations. Because management challenges persist at DHS, I believe the existing Under Secretary for Management position at DHS's lacks sufficient authority to direct the type of sustained leadership and overarching management integration and transformation strategy that is needed department-wide, and Congress must elevate that Under Secretary's role. The legislation I offer today would do that and would provide the focused, high-level attention that will result in effective management reform. I believe this legislation is vital to DHS's success, and I urge my colleagues to join me in supporting this legislation.

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 printed in the RECORD, as follows:

S. 872

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 ''Effective Homeland Security Management Act of 2009''.

SEC. 2. DEPUTY SECRETARY OF HOMELAND SECURITY FOR MANAGEMENT.

(a) ESTABLISHMENT AND SUCCESSION.—Section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking ''DEPUTY SECRETARY'' and inserting ''DEPUTY SECRETARIES'';

(B) by striking paragraph (6);

(C) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(D) by striking paragraph (1) and inserting the following:

''(1) A Deputy Secretary of Homeland Security.

''(2) A Deputy Secretary of Homeland Security for Management.''; and

(2) by adding at the end the following:

''(g) VACANCIES.—

''(1) VACANCY IN OFFICE OF SECRETARY.—

''(A) DEPUTY SECRETARY.—In case of a vacancy in the office of the Secretary, or of the absence or disability of the Secretary, the Deputy Secretary of Homeland Security may exercise all the duties of that office, and for the purpose of section 3345 of title 5, United States Code, the Deputy Secretary of Homeland Security is the first assistant to the Secretary.

''(B) DEPUTY SECRETARY FOR MANAGEMENT.—When by reason of absence, disability, or vacancy in office, neither the Secretary nor the Deputy Secretary of Homeland Security is available to exercise the duties of the office of the Secretary, the Deputy Secretary of Homeland Security for Management shall act as Secretary.

''(2) VACANCY IN OFFICE OF DEPUTY SECRETARY.—In the case of a vacancy in the office of the Deputy Secretary of Homeland Security, or of the absence or disability of the Deputy Secretary of Homeland Security, the Deputy Secretary of Homeland Security for Management may exercise all the duties of that office.

''(3) FURTHER ORDER OF SUCCESSION.—The Secretary may designate such other officers of the Department in further order of succession to act as Secretary.''.

(b) RESPONSIBILITIES.—Section 701 of the Homeland Security Act of 2002 (6 U.S.C. 341) is amended—

(1) in the section heading, by striking ''**UNDER SECRETARY**'' and inserting ''**DEPUTY SECRETARY OF HOMELAND SECURITY**'';

(2) in subsections (a) through (c) by striking ''Under Secretary for Management'' each place that term appears and inserting ''Deputy Secretary of Homeland Security for Management''.

(c) APPOINTMENT, EVALUATION, AND REAPPOINTMENT.—Section 701(c) of the Homeland Security Act of 2002 (6 U.S.C. 341) is amended—

(1) in the subsection heading, by striking ''AND EVALUATION'' and inserting '', EVALUATION, AND REAPPOINTMENT'';

(2) in the matter preceding paragraph (1), by striking ''shall'';

(3) in paragraph (1), by inserting ''shall'' after ''(1)'';

(4) in paragraph (2)—

(A) by inserting ''shall'' after ''(2)''; and

(B) by striking ''and'' after the semicolon;

(5) in paragraph (3)—

(A) by inserting ''shall'' after ''(3)''; and

(B) by striking the period and inserting a semicolon; and

(6) by adding at the end the following:

''(4) shall—

''(A) serve for a term of 5 years; and

''(B) be subject to removal by the President if the President—

''(i) finds that the performance of the Deputy Secretary of Homeland Security for Management is unsatisfactory; and

''(ii) communicates the reasons for removing the Deputy Secretary of Homeland Security for Management to Congress before such removal; and

''(5) may be reappointed in accordance with paragraph (1), if the Secretary has made a satisfactory determination under paragraph (3) for the 3 most recent performance years.''.

(d) REFERENCES.—References in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Under Secretary for Management of the Department of Homeland Security shall be deemed to refer to the Deputy Secretary of Homeland Security for Management.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) OTHER REFERENCE.—Section 702(a) of the Homeland Security Act of 2002 (6 U.S.C. 342(a)) is amended by striking ''Under Secretary for Management'' and inserting ''Deputy Secretary of Homeland Security for Management''.

(2) TABLE OF CONTENTS.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by striking the item relating to section 701 and inserting the following:

''Sec. 701. Deputy Secretary of Homeland Security for Management.''.

(3) EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Under Secretary of Homeland Security for Management, and inserting the following:

''Deputy Secretary of Homeland Security for Management.''.

By Mr. LUGAR:

S. 873. A bill to expand and improve Cooperative Threat Reduction Programs, and for other purposes; to the Committee on Armed Services.

Mr. LUGAR. Mr. President, today I rise to introduce the Nunn-Lugar Cooperative Threat Reduction Improvement Act of 2009.

The proliferation of weapons of mass destruction remains the number one national security threat facing the United States and the international community. Our success in responding to this threat depends on cooperation with other nations and on maintaining a basic consensus on non-proliferation principles. The Nunn-Lugar Program has become the primary tool through which the U.S. works to safely destroy nuclear, chemical, and biological warfare capacity. Through Nunn-Lugar, the U.S. has eliminated more nuclear weapons than the combined arsenals of the United Kingdom, France, and China. When the Soviet Union dissolved Ukraine, Kazakhstan and Belarus emerged as the third, fourth and eighth largest nuclear weapons powers in the world. Today they are nuclear weapons free.

I am delighted that President Obama made the Nunn-Lugar Cooperative Threat Reduction Program such a high profile issue during his campaign. In 2005, then-Senator Obama and I traveled to Russia to see the Nunn-Lugar Program in action. We visited the Russian nuclear warhead storage facility at Saratov and the mobile missile dismantlement facility near Perm. This experience gives him a unique vantage point to take important steps to revitalize and expand the program.

The Nunn-Lugar Program has accumulated an impressive list of accomplishments. To date it has deactivated 7,504 strategic nuclear warheads, 742 intercontinental ballistic missiles, ICBMs, destroyed, 496 ICBM silos eliminated, 143 ICBM mobile launchers destroyed, 633 submarine launched ballistic missiles, SLBMs, eliminated, 476 SLBM launchers eliminated, 31 nuclear submarines capable of launching ballistic missiles destroyed, 155 bomber eliminated, 906 nuclear air-to-surface missiles, ASMs, destroyed, 194 nuclear test tunnels eliminated, 422 nuclear weapons transport train shipments secured, upgraded security at 24 nuclear weapons storage sites, and built and equipped 16 biological monitoring stations.

While originally focused on the states of the former Soviet Union,

Nunn-Lugar has also produced results outside of Russia. The program eliminated a formerly secret chemical weapons stockpile in Albania. Other governments, such as Pakistan, Afghanistan, Congo, the Philippines, and Indonesia are now inquiring about Nunn-Lugar assistance with dangerous weapons and materials.

Mr. President, last month the National Academy of Sciences, NAS, released a report on the future of the Nunn-Lugar Program. It provided a critically important set of recommendations that should guide the Obama Administration's efforts to expand the Nunn-Lugar Program around the world.

The report was required by the 2008 National Defense Authorization Act to recommend ways to strengthen and expand the Defense Department's Nunn-Lugar Cooperative Threat Reduction program. The report argues persuasively that the Nunn-Lugar Program should be expanded geographically, updated in form and function and supported as an active tool of foreign policy. Over the last 16 years Nunn-Lugar has been focused heavily on the destruction and dismantlement of massive Soviet weapons systems and the facilities that developed them. In the future, the program will be asked to address much more complex and diverse security threats. The changing security environment means that the magnitude of projects focused on former Soviet weapons threats are likely to be the exception and not the norm. As a result, the NAS report argues that the program must be less cumbersome and bureaucratic so it can be more agile, flexible, and responsive to ensure timely contributions across a larger number of countries. It concludes by saying ''that expanding the nation's [Nunn-Lugar] cooperative threat reduction programs beyond the former Soviet Union, as proposed by Congress, would enhance U.S. national security and global stability.'' The report argues that Nunn-Lugar ''should be expanded geographically, updated in form and function . . . and supported as an active tool of foreign policy by engaged leadership from the White House and the relevant cabinet secretaries.''

Specifically, the NAS Report recommends that the Pentagon take the following steps: Remove any remaining geographic limitations on the program and streamline contracting procedures. Request from Congress limited ''notwithstanding authority'' to give Nunn-Lugar the flexibility it needs for future engagements in unexpected locations. Request that Congress exempt the Nunn-Lugar Program from the Miscellaneous Receipts Act to enable the program to accept funds from foreign countries and to co-mingle those with program funds to accomplish nonproliferation and disarmament goals. Review the legal and policy underpinnings of the Nunn-Lugar Program because many are cumbersome, dated, limiting, and often diminish value and hinder success. In addition to supporting traditional arms control and nonproliferation goals, Nunn-Lugar should be used to advance other multilateral instruments such as the Proliferation Security Initiative and United Nations Security Council Resolution 1540. While the Nunn-Lugar Program grew through the 1990s there was little corresponding growth in the size of the staff that guided policy—the office must be expanded. Engage broader military components, including the Unified Combatant Commands, to ensure full coordination and effective implementation of Nunn-Lugar.

The majority of these items do not require legislation but rather simple Executive Branch management actions and improvements. As a result, I have written to Under Secretary of Defense for Policy, Michele Flournoy, and the new WMD Coordinator at the White House, Gary Samore, urging them to adopt these important recommendations. But the granting of limited notwithstanding authority for the Nunn-Lugar Program and its exemption from the Miscellaneous Receipts Act does require Congressional authorization. The bill I am introducing today is focused on accomplishing this task.

One of the most striking points made by the report's authors was that the Nunn-Lugar Program has suffered from a lack of leadership. It states that ''since 1995, the level of leadership in DoD has been downgraded from a high priority program managed by a Deputy Assistant Secretary of Defense for Cooperative Threat Reduction, and Special Assistant to the Secretary of Defense, to a CTR Policy Office under a Director for the CTR Program.'' An even more stark contrast is the time and diplomacy that former Secretaries Perry and Cohen committed to visiting project sites and engaging foreign capitals when compared to their successors. I am confident this is a trend that can be reversed quickly by the Obama administration with proper leadership. Under Secretary Flournoy, the Deputy Secretary of Defense, and Secretary Gates should make visiting Nunn-Lugar sites a high priority and offer their personal diplomacy to assisting the program in meetings its goals.

The Nunn-Lugar Program has made critically important contributions to US national security through the elimination of strategic weapons systems and platforms arrayed against us. Even as the threat changes, I am confident that it will continue to serve US interests with the right leadership and direction. I commend the members of the NAS committee for an insightful and invigorating set of recommendations. I ask my colleagues here in the Senate to support this legislation and I am hopeful that the Obama administration will use the report's recommendations as a resource as they move to expand the program.

In sum, we must take every measure possible in addressing threats posed by weapons of mass destruction. We must eliminate those conditions that restrict us or delay our ability to act. The US has the technical expertise and the diplomatic standing to dramatically benefit international security. American leaders must ensure that we have the political will and the resources to implement programs devoted to these ends.

By Mr. BINGAMAN (for himself and Mr. UDALL, of New Mexico):

S. 874. A bill to establish El Rio Grande Del Norte National Conservation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce El Río Grande Del Norte National Conservation Area Establishment Act. This legislation will designate approximately 235,980 acres of public land managed by the Bureau of Land Management in Taos and Río Arriba counties as a National Conservation Area. The conservation area includes two new wilderness areas—the 13,420-acre Cerro del Yuta Wilderness on the east-side and the 8,000-acre Río San Antonio Wilderness in the west.

The conservation area will protect and enhance cultural, ecological, and scenic resources in an area with premier recreational opportunities important to the region's economy. It incorporates the upper reaches of the Rio Grande Gorge, previously designated as a Wild and Scenic River, and protects elk wintering grounds and migratory corridors along the plateau between Ute Mountain to the east and San Antonio Mountain to the west. The conservation area will protect breeding habitat for other game species like deer and antelope and for birds of prey that hunt throughout the area, including peregrine falcons, golden eagles, and bald eagles. The riparian area along the Río Grande also provides important habitat for brown trout and the federally-listed endangered southwestern willow flycatcher.

The Cerro del Yuta Wilderness will add protections to Ute Mountain, a mountainous and forested extinct volcano which rises to more than 10,000 feet from an elevation of about 7,600 feet at its base. From its peak Ute Mountain offers views of the Sangre de Cristo Mountains to the east, the deep canyon walls of the Río Grande Gorge at its western base, and the high mesa sagebrush-grasslands interspersed with piñon juniper woodlands that form the majority of the conservation area to its west. Known as Tah Ha Bien to members of the Taos Pueblo and Cerro del Yuta to the earliest Hispanic settlers of the region, Ute Mountain was named for the historic Ute tribe that traversed this area along its route to the eastern plains. The mountain has a long history both geologically and culturally speaking, and evidence of human interaction with Ute Mountain can be still be found, including prehistoric hunting stations, historic

sheep herding camps, and important sacred sites on the mountain. As a relatively new addition to the public domain, the Bureau of Land Management has only begun to account for all the cultural resources that may be present on Ute Mountain.

The Río San Antonio Wilderness Area lies northwest of San Antonio Mountain and is currently managed as a Wilderness Study Area by the Bureau of Land Management. Composed of grassland vegetation similar to the majority of the conservation area, its unique character is shaped by the 200-foot-deep canyon formed by the waters of the Río San Antonio that bisects the wilderness area. The canyon provides important riparian habitat to wildlife and offers visitors opportunities for solitude and primitive and unconfined recreation. A favorite pastime of locals and visitors alike is the outstanding opportunity for fly fishing the Río San Antonio. By affirmatively designating this area as wilderness, we can help preserve its natural character that draws visitors to the area.

This legislation seeks to protect the valuable natural and cultural resources found in the area while also recognizing that the history of these lands is still being written by the local community, composed of Pueblo Indians, descendents of Hispanic and American settlers, and new generations of settlers drawn to the area for similar reasons as those who came before them. Residents maintain a strong connection to these public lands and are interested in preserving the traditional ways in which they have used them. A good example of this is the importance to the local community to ensure that the continued and sustainable collection of piñon nuts and firewood from the public lands is permitted. Based on this input, earlier drafts were revised to make specific mention that these uses are permissible within the conservation area. In addition, existing grazing within the conservation area will be preserved consistent with current management practices.

Visitors and residents of northern New Mexico also enjoy these public lands for recreational purposes, including hiking, camping, mountain biking, river rafting, skiing, hunting, fishing, photography and bird watching, among many others. The local economy benefits greatly from the tourists who visit this area to take in the scenic beauty and natural character of the region, and it is my hope that this designation will further highlight the region as a premier destination in the State, nationally and internationally.

This bill is the culmination of more than 2 years of work with members of the local community to craft language that achieves the balance vital to ensure a thriving economy, the preservation of the region's natural resources, and a sustained way of life for residents of northern New Mexico. Without the constructive input from the local community, this bill would look very different from the one that I am privileged to introduce today. I am also pleased that my colleague Senator TOM UDALL is a cosponsor of this legislation, and I look forward to working with him and other members of the Senate toward its ultimate passage.

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 printed in the RECORD, as follows:

S. 874

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 ''El Río Grande Del Norte National Conservation Area Establishment Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means El Río Grande Del Norte National Conservation Area established by section 3(a)(1).

(2) LAND GRANT COMMUNITY.—The term ''land grant community'' means a member of the Board of Trustees of confirmed and nonconfirmed community land grants within the Conservation Area.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Conservation Area developed under section 3(d).

(4) MAP.—The term ''map'' means the map entitled ''El Río Grande Del Norte National Conservation Area'' and dated March 23, 2009.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established El Río Grande Del Norte National Conservation Area in the State.

(2) AREA INCLUDED.—The Conservation Area shall consist of approximately 235,980 acres of public land in Taos and Rio Arriba counties in the State, as generally depicted on the map.

(b) PURPOSES.—The purposes of the Conservation Area are to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, scientific, geological, historical, biological, wildlife, educational, recreational, and scenic resources of the Conservation Area.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Conservation Area—

(A) in a manner that conserves, protects, and enhances the resources of the Conservation Area; and

(B) in accordance with—

(i) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(ii) this Act; and

(iii) any other applicable laws.

(2) USES.—

(A) IN GENERAL.—The Secretary shall allow only such uses of the Conservation Area that the Secretary determines would further the purposes described in subsection (b).

(B) USE OF MOTORIZED VEHICLES.—

(i) IN GENERAL.—Except as needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the Conservation Area shall be permitted only on roads designated for use by motorized vehicles in the management plan.

(ii) NEW ROADS.—No additional road shall be built within the Conservation Area after the date of enactment of this Act unless the road is needed for public safety or natural resource protection.

(C) GRAZING.—The Secretary shall permit grazing within the Conservation Area, where established before the date of enactment of this Act—

(i) subject to all applicable laws (including regulations) and Executive orders; and

(ii) consistent with the purposes described in subsection (b).

(D) COLLECTION OF PIÑON NUTS AND FIREWOOD.—Nothing in this Act precludes the traditional collection of firewood and piñon nuts for noncommercial personal use within the Conservation Area—

(i) in accordance with any applicable laws; and

(ii) subject to such terms and conditions as the Secretary determines to be appropriate.

(E) UTILITY CORRIDOR UPGRADES.—Nothing in this Act precludes the Secretary from authorizing the upgrading of an existing utility corridor (including the widening of an existing easement) through the Conservation Area—

(i) in accordance with any applicable laws; and

(ii) subject to such terms and conditions as the Secretary determines to be appropriate.

(F) TRIBAL CULTURAL USES.—

(i) ACCESS.—The Secretary shall, in consultation with Indian tribes or pueblos—

(I) ensure the protection of religious and cultural sites; and

(II) provide occasional access to the sites by members of Indian tribes or pueblos for traditional cultural and customary uses, consistent with Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996).

(ii) TEMPORARY CLOSURES.—In accordance with Public Law 95–341 (commonly known as the ''American Indian Religious Freedom Act'') (42 U.S.C. 1996), the Secretary, on request of an Indian tribe or pueblo, may temporarily close to general public use 1 or more specific areas of the Conservation Area in order to protect traditional cultural and customary uses in those areas by members of the Indian tribe or the pueblo.

(d) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall develop a management plan for the Conservation Area.

(2) OTHER PLANS.—To the extent consistent with this Act, the plan may incorporate in the management plan the Rio Grande Corridor Management Plan in effect on the date of enactment of this Act.

(3) CONSULTATION.—The management plan shall be developed in consultation with—

(A) State and local governments;

(B) tribal governmental entities;

(C) land grant communities; and

(D) the public.

(4) CONSIDERATIONS.—In preparing and implementing the management plan, the Secretary shall consider the recommendations of Indian tribes and pueblos on methods for—

(A) ensuring access to religious and cultural sites;

(B) enhancing the privacy and continuity of traditional cultural and religious activities in the Conservation Area; and

(C) protecting traditional cultural and religious sites in the Conservation Area.

(e) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land that is within the boundary of the Conservation Area that is acquired by the United States shall—

(1) become part of the Conservation Area; and

(2) be managed in accordance with—

(A) this Act; and

(B) any other applicable laws.

(f) SPECIAL MANAGEMENT AREAS.—

(1) IN GENERAL.—The establishment of the Conservation Area shall not change the management status of any area within the boundary of the Conservation Area that is—

(A) designated as a component of the National Wild and Scenic Rivers System under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); or

(B) managed as an area of critical environmental concern.

(2) CONFLICT OF LAWS.—If there is a conflict between the laws applicable to the areas described in paragraph (1) and this Act, the more restrictive provision shall control.

SEC. 4. DESIGNATION OF WILDERNESS AREAS.

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the following areas in the Conservation Area are designated as wilderness and as components of the National Wilderness Preservation System:

(1) CERRO DEL YUTA WILDERNESS.—Certain land administered by the Bureau of Land Management in Taos County, New Mexico, comprising approximately 13,420 acres as generally depicted on the map, which shall be known as the ''Cerro del Yuta Wilderness''.

(2) RÍO SAN ANTONIO WILDERNESS.—Certain land administered by the Bureau of Land Management in Rio Arriba County, New Mexico, comprising approximately 8,000 acres, as generally depicted on the map, which shall be known as the ''Río San Antonio Wilderness''.

(b) MANAGEMENT OF WILDERNESS AREAS.—Subject to valid existing rights, the wilderness areas designated by subsection (a) shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that with respect to the wilderness areas designated by this Act—

(1) any reference to the effective date of the Wilderness Act shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundary of the wilderness areas designated by subsection (a) that is acquired by the United States shall—

(1) become part of the wilderness area in which the land is located; and

(2) be managed in accordance with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.);

(B) this Act; and

(C) any other applicable laws.

(d) GRAZING.—Grazing of livestock in the wilderness areas designated by subsection (a), where established before the date of enactment of this Act, shall be administered in accordance with—

(1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(2) the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(e) BUFFER ZONES.—

(1) IN GENERAL.—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area designated by subsection (a).

(2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—The fact that an activity or use on land outside any wilderness area designated by subsection (a) can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.

(f) RELEASE OF WILDERNESS STUDY AREAS.—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land within the San Antonio Wilderness Study Area not designated as wilderness by this section—

(1) has been adequately studied for wilderness designation;

(2) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(3) shall be managed in accordance with this Act.

SEC. 5. GENERAL PROVISIONS.

(a) MAPS AND LEGAL DESCRIPTIONS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file the map and legal descriptions of the Conservation Area and the wilderness areas designated by section 4(a) with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The map and legal descriptions filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct errors in the legal description and map.

(3) PUBLIC AVAILABILITY.—The map and legal descriptions filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(b) NATIONAL LANDSCAPE CONSERVATION SYSTEM.—The Conservation Area and the wilderness areas designated by section 4(a) shall be administered as components of the National Landscape Conservation System.

(c) FISH AND WILDLIFE.—Nothing in this Act affects the jurisdiction of the State with respect to fish and wildlife located on public land in the State, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may designate zones where, and establishing periods when, hunting shall not be allowed for reasons of public safety, administration, or public use and enjoyment.

(d) WITHDRAWALS.—Subject to valid existing rights, any Federal land within the Conservation Area and the wilderness areas designated by section 4(a), including any land or interest in land that is acquired by the United States after the date of enactment of this Act, is withdrawn from—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(e) TREATY RIGHTS.—Nothing in this Act enlarges, diminishes, or otherwise modifies any treaty rights.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. SPECTER (for himself, Mr. TESTER, and Mr. GRASSLEY):

S. 875. A bill to regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today on behalf of myself, Senator GRASSLEY and Senator TESTER, to offer the Presidential Signing Statements Act of 2009. The purpose of this bill is to regulate the use of Presidential Signing Statements in the interpretation of Acts of Congress. This bill is similar in substance to two prior versions of this legislation: the Presidential Signing Statements Act of 2007, which I introduced on June 29, 2007; and the Presidential Signing Statements Act of 2006, which I introduced on July 26, 2006.

As I have stated before, I believe that this legislation is necessary to protect our constitutional system of checks and balances. This bill achieves that goal in the following ways.

First, it prevents the President from issuing a signing statement that alters the meaning of a statute by instructing federal and state courts not to rely on, or defer to, presidential signing statements as a source of authority when determining the meaning of any Act of Congress.

Second, it grants Congress the power to participate in any case where the construction or constitutionality of any Act of Congress is in question and a presidential signing statement for that Act was issued by allowing Congress to file an amicus brief and present oral argument in such a case; instructing that, if Congress passes a joint resolution declaring its view of the correct interpretation of the statute, the Court must admit that resolution into the case record; and providing for expedited review in such a case.

Since the days of President James Monroe, Presidents have issued statements when signing bills. It is widely agreed that there are legitimate uses for signing statements. For example, Presidents may use signing statements to instruct executive branch officials how to administer a law or to explain to the public the likely effect of a law. There may be a host of other legitimate uses.

It is clear, however, that the President cannot use a signing statement to rewrite the words of a statute, nor can he use a signing statement to selectively nullify those provisions he does not like. This much is clear from our Constitution. The Constitution grants the President a specific, defined role in enacting legislation. Article I, section 1 of the Constitution vests ''all legislative powers . . . in a Congress.'' Article I, section 7 of the Constitution provides that, when a bill is presented to the President, he may either sign it or veto it with his objections. He may also choose to do nothing, thus rendering a so-called pocket veto. But the President cannot veto part of a bill—he cannot veto certain provisions he does not like.

The Framers had good reason for constructing the legislative process as they did. According to The Records of the Constitutional Convention, the veto power was designed to protect citizens from a particular Congress that might enact oppressive legislation. However, the Framers did not want the veto power to be unchecked, and so, in Article I, section 7, they balanced it by allowing Congress to override a veto by 2/3 vote.

As I stated when I initially introduced this legislation in 2006, this is a finely structured constitutional procedure that goes straight to the heart of our system of checks and balances. Any action by the President that circumvents this procedure is an unconstitutional attempt to usurp legislative authority. If the President is permitted to re-write the bills that Congress passes and cherry pick which provisions he likes and does not like, he subverts the constitutional process designed by the Framers. The Supreme Court has affirmed that the Constitutional process for enacting legislation must be safeguarded. As the Court explained in INS v. Chahda, ''It emerges clearly that the prescription for legislative action in Article I, Section 1 and 7 represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.'' 462 U.S. 919, 951, 1982.

It is well within Congress's power to enact rules of statutory interpretation intended to preserve this constitutional structure. This power flows from Article I, section 8, clause 18 of the Constitution, which gives Congress the power ''To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the U.S., or in any department or officer thereof.'' Rules of statutory interpretation are ''necessary and proper'' to execute the legislative power.

Several scholars have agreed: Jefferson B. Fordham, a former Dean of the University of Pennsylvania Law School said, ''[I]t is within the legislative power to lay down rules of interpretation for the future;'' Mark Tushnet, a Professor at Harvard Law School explained, ''In light of the obvious congressional power to prescribe a statute's terms (and so its meaning), congressional power to prescribe interpretive methods seems to me to follow;'' Michael Stokes Paulsen, an Associate Dean of the University of Minnesota Law School noted, ''Congress is the master of its own statutes and can prescribe rules of interpretation governing its own statutes as surely as it may alter or amend the statutes directly.'' Finally, J. Sutherland, the author of the leading multi-volume treatise for the rules of statutory construction has said, ''There should be no question that an interpretive clause operating prospectively is within legislative power.''

Indeed, recent experience shows why such legislation is ''necessary.'' The use of signing statements has risen dramatically in recent years. President Clinton issued 105 signing statements; President Bush issued 161. What is more alarming than the sheer numbers, is that President Bush's signing statements often raised constitutional concerns and other objections to several provisions of a law. The President used those statements in a way that threatened to render the legislative process a virtual nullity, making it completely unpredictable how certain laws will be enforced. Even where Congress managed to negotiate checks on executive power, the President used signing statements to override the legislative language and defy congressional intent.

Two prominent examples make the point. In 2006, I spearheaded the delicate negotiations on the PATRIOT Act Reauthorization, which included months of painstaking efforts to balance national security and civil liberties, disrupted by the dramatic disclosure of the Terrorist Surveillance Program. The final version of the bill featured a carefully crafted compromise necessary to secure the act's passage. Among other things, it included several oversight provisions designed to ensure that the FBI did not abuse special terrorism-related powers permitting it to make secret demands for business records. The President dutifully signed the measure into law, only to then enter a signing statement insisting he could withhold any information from Congress required by the oversight provisions if he decided that disclosure would ''impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.''

The second example arose in 2005. Congress overwhelmingly passed Senator JOHN MCCAIN'S amendment to ban all U.S. personnel from inflicting ''cruel, inhuman or degrading'' treatment on any prisoner held by the United States. There was no ambiguity in Congress's intent; in fact, the Senate approved it 90 to 9. However, after signing the bill into law, the President quietly issued a signing statement asserting that his Administration would construe it ''in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power.''

Many understood this signing statement to undermine the legislation. In a January 4, 2006 article titled, ''Bush could bypass new torture ban: Waiver right is reserved,'' the Boston Globe cited an anonymous ''senior administration official'' as saying, ''the president intended to reserve the right to use harsher methods in special situations involving national security.''

As outrageous as these signing statements are, intruding on the Constitution's delegation of ''all legislative powers'' to the Congress, it is even more outrageous that Congress has done nothing to protect its constitutional powers. In 2006 and 2007, the legislation I introduced giving Congress standing to challenge the constitutionality of these signing statements failed to muster the veto-proof majority it would have surely required.

With a new administration, I believe the time has come to pass this important legislation. This bill does not seek to limit the President's power, and it does not seek to expand Congress's power. Rather, this bill simply seeks to safeguard our Constitution. In this Congress, it has a better chance of mustering a majority vote and being signed into law by the new President.

That said, two days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his ''commander in chief'' and ''foreign affairs'' powers, he refused to be bound by at least eleven specific provisions of the bill including one long-standing rider to appropriations bills designed to aid congressional oversight. As I told The Wall Street Journal, ''We are having a repeat of what Democrats bitterly complained about under President Bush.'' I hope this will be the exception rather than the rule.

In the meantime, this bill seeks to implement measures that will safeguard the constitutional structure of enacting legislation. In preserving this structure, this bill reinforces the system of checks and balances and separation of powers set out in our Constitution.

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 printed in the RECORD, as follows:

S. 875

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 ''Presidential Signing Statements Act of 2009''.

SEC. 2. DEFINITION.

As used in this Act, the term ''presidential signing statement'' means a statement issued by the President about a bill, in conjunction with signing that bill into law pursuant to Article I, section 7, of the Constitution.

SEC. 3. JUDICIAL USE OF PRESIDENTIAL SIGNING STATEMENTS.

In determining the meaning of any Act of Congress, no Federal or State court shall rely on or defer to a presidential signing statement as a source of authority.

SEC. 4. CONGRESSIONAL RIGHT TO PARTICIPATE IN COURT PROCEEDINGS OR SUBMIT CLARIFYING RESOLUTION.

(a) CONGRESSIONAL RIGHT TO PARTICIPATE AS AMICUS CURIAE.—In any action, suit, or proceeding in any Federal or State court (including the Supreme Court of the United States), regarding the construction or constitutionality, or both, of any Act of Congress in which a presidential signing statement was issued, the Federal or State Court shall permit the United States Senate, through the Office of Senate Legal Counsel, as authorized in section 701 of the Ethics in Government Act of 1978 (2 U.S.C. 288), or the United States House of Representatives, through the Office of General Counsel for the United States House of Representatives, or both, to participate as an amicus curiae, and to present an oral argument on the question of the Act's construction or constitutionality, or both. Nothing in this section shall be construed to confer standing on any party seeking to bring, or jurisdiction on

any court with respect to, any civil or criminal action, including suit for court costs, against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of a House of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

(b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING RESOLUTION.—In any suit referenced in subsection (a), the full Congress may pass a concurrent resolution declaring its view of the proper interpretation of the Act of Congress at issue, clarifying Congress's intent or clarifying Congress's findings of fact, or both. If Congress does pass such a concurrent resolution, the Federal or State court shall permit the United States Congress, through the Office of Senate Legal Counsel, to submit that resolution into the record of the case as a matter of right.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of each Federal or State court, including the Supreme Court of the United States, to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

By Mr. SPECTER (for himself and Mr. WHITEHOUSE):

S. 876. A bill to provide for the substitution of the United States in certain civil actions relating to electronic service providers and FISA; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to reintroduce legislation that would substitute the United States in the place of electronic communications service providers who were sued for violating the Foreign Intelligence Surveillance Act, FISA, and other statutory and constitutional provisions.

FISA reform legislation passed the Senate in February and July of 2008, both times by a vote of 68 to 29, before being signed into law by President Bush on July 10, 2008. This legislation made many necessary changes to FISA to enhance our intelligence collection capabilities, but it also included a controversial provision giving retroactive immunity to telecommunications companies for their alleged cooperation with the warrantless surveillance program authorized by the President after September 11, 2001. The legislation stripped the Federal courts of jurisdiction to decide more than 40 consolidated cases involving claims of violations of FISA and related statutes, even though most Members of Congress had not been briefed on the program, and despite the fact that the judge handling the cases, Chief Judge Vaughn Walker of the Northern District of California, had questioned the legality of the program in a related opinion issued just days before the final Senate debate.

During the February and July FISA debates, I sought to keep the courts open as a way to check executive branch excesses. Through both a standalone bill, S. 2402, considered by the Senate Judiciary Committee and an amendment, SA 3927 to S. 2248, offered during the Senate's February debate on the FISA reform bill, I proposed to substitute the U.S. Government for the telephone companies facing lawsuits for their alleged cooperation with the Terrorist Surveillance Program, TSP. Just as in 2008, I propose legislation that would place the Government in the shoes of the telephone companies, with the same defenses no more and no less. Thus, under the bill, plaintiffs get their day in court and may hold the Government accountable for unlawful activity, if any, related to the surveillance program. At the same time, the carriers themselves avoid liability stemming from their efforts to be good citizens.

I fought hard in 2008 to keep the courts open on the question of the TSP, and urged my colleagues to improve the FISA bill. I continue that fight today with a new Administration in office. During the prior floor debate I said: ''Although I am prepared to stomach this bill, if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I don't believe it is too late to make this bill better.''

As I observed on the floor last year, it is necessary for Congress to support intelligence collection efforts because of the continuing terrorist threat. No one wants to be blamed for another 9–11. Indeed, as I acknowledged during the debate, my own briefings on the telephone companies' cooperation with the Government convinced me of the program's value. Nevertheless, I tried to impress upon my colleagues the importance and historical context of our actions. I said:

We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 9/11 to the present as the greatest expansion of Executive authority in history—unchecked expansion of authority. The President disregards the National Security Act of 1947 mandating notice to the Intelligence Committee; he doesn't do it. The President takes legislation that is presented by Congress and he signs it, and then he issues a signing statement disagreeing with key provisions. There is nothing Congress can do about it.

The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was [reversed] by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But the very formidable dissenting opinion laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the [surveillance illegal]. The Congress ought to let the courts fulfill their constitutional function.

It is not too late to provide for judicial review of controversial post-9/11 intelligence surveillance activities. The cases before Judge Vaughn Walker are still pending and, even if he were to dismiss them under the statutory defenses dubbed retroactive immunity, Congress can and should permit the cases to be refiled against the Government, standing in the shoes of the carriers.

This legislation substitutes the U.S. in place of any electronic communication service provider who provided communications in connection with an intelligence activity that was: authorized by the President between September 11, 2001, and January 17, 2007; and designed to detect or prevent a terrorist attack against the U.S. In order for substitution to apply, the electronic communications service provider must have received a written request from the Attorney General or the head of an element of the intelligence community indicating that the activity was authorized by the President and determined to be lawful. If the provider assisted the Government beyond what was requested in writing, this legislation will provide no relief to the service provider.

The legislation also establishes a limited waiver of sovereign immunity that only applies to ''covered civil actions'' essentially, the 40 cases currently pending before the U.S. District Court in the Northern District of California. This is to prevent the Government from asserting immunity in the event it is substituted for the current defendants.

We can still pass legislation substituting the Government for the various telecom defendants and have a judicial assessment of the constitutionality and legality of the controversial surveillance. Such a judicial assessment is necessary to resolve the clash between the Executive and Legislative branches over the legality and constitutionality of the surveillance program.

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 printed in the RECORD, as follows:

S. 876

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

SECTION 1. AMENDMENT TO FISA.

Title III of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110-261) is amended by inserting at the end the following:

''SEC. 302. SUBSTITUTION OF THE UNITED STATES IN CERTAIN ACTIONS.

''(a) IN GENERAL.—

''(1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or State court shall substitute the United States for an electronic communication service provider with respect to any claim in a covered civil action as provided in this subsection, if the Attorney General certifies to that court that—

''(A) with respect to that claim, the assistance alleged to have been provided by the electronic communication service provider was—

''(i) provided in connection with an intelligence activity involving communications that was—

''(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

''(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

''(ii) described in a written request or directive from the Attorney General or the

head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

''(I) authorized by the President; and

''(II) determined to be lawful; or

''(B) the electronic communication service provider did not provide the alleged assistance.

''(2) SUBSTITUTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), upon receiving a certification under paragraph (1), a Federal or State court shall—

''(i) substitute the United States for the electronic communication service provider as the defendant as to all claims designated by the Attorney General in that certification, consistent with the procedures under rule 25(c) of the Federal Rules of Civil Procedure, as if the United States were a party to whom the interest of the electronic communication service provider in the litigation had been transferred; and

''(ii) as to that electronic communication service provider—

''(I) dismiss all claims designated by the Attorney General in that certification; and

''(II) enter a final judgment relating to those claims.

''(B) CONTINUATION OF CERTAIN CLAIMS.—If a certification by the Attorney General under paragraph (1) states that not all of the alleged assistance was provided under a written request or directive described in paragraph (1)(A)(ii), the electronic communication service provider shall remain as a defendant.

''(C) DETERMINATION.—

''(i) IN GENERAL.—Substitution under subparagraph (A) shall proceed only after a determination by the Foreign Intelligence Surveillance Court that—

''(I) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii)(B) of title 18, United States Code;

''(II) the assistance alleged to have been provided was undertaken by the electronic communication service provider acting in good faith and pursuant to an objectively reasonable belief that compliance with the written request or directive under paragraph (1)(A)(ii) was permitted by law; or

''(III) the electronic communication service provider did not provide the alleged assistance.

''(ii) CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

''(I) immediately certify the questions described in clause (i) to the Foreign Intelligence Surveillance Court; and

''(II) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

''(iii) PARTICIPATION OF PARTIES.—In reviewing a certification and making a determination under clause (i), the Foreign Intelligence Surveillance Court shall permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

''(iv) DECLARATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a determination made pursuant to clause (i) would harm the national security of the United States, the Foreign Intelligence Surveillance Court shall limit any public disclosure concerning such determination, including any public order following such an ex parte review, to a statement that the conditions of clause (i) have or have not been met, without disclosing the basis for the determination.

''(D) SPECIAL RULE.—Notwithstanding any other provision of this Act—

''(i) in any matter in which the Foreign Intelligence Surveillance Court denies dismissal on grounds that the statutory defenses provided in title VIII of the Foreign Intelligence Surveillance Act of 1978 are unconstitutional, the Attorney General shall be substituted pursuant to this paragraph; and

''(ii) if a claim is dismissed pursuant to title VIII of the Foreign Intelligence Surveillance Act of 1978 prior to date of enactment of this section, the claim against the United States shall be tolled for the period during which the claim was pending and may be refiled against the United States pursuant to rule 60(b) of the Federal Rules of Civil Procedure after the date of enactment of this section.

''(3) PROCEDURES.—

''(A) TORT CLAIMS.—Upon a substitution under paragraph (2), for any tort claim—

''(i) the claim shall be deemed to have been filed under section 1346(b) of title 28, United States Code, except that sections 2401(b), 2675, and 2680(a) of title 28, United States Code, shall not apply; and

''(ii) the claim shall be deemed timely filed against the United States if it was timely filed against the electronic communication service provider.

''(B) CONSTITUTIONAL AND STATUTORY CLAIMS.—Upon a substitution under paragraph (2), for any claim under the Constitution of the United States or any Federal statute—

''(i) the claim shall be deemed to have been filed against the United States under section 1331 of title 28, United States Code;

''(ii) with respect to any claim under a Federal statute that does not provide a cause of action against the United States, the plaintiff shall be permitted to amend such claim to substitute, as appropriate, a cause of action under—

''(I) section 704 of title 5, United States Code (commonly known as the Administrative Procedure Act);

''(II) section 2712 of title 18, United States Code; or

''(III) section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810);

''(iii) the statutes of limitation applicable to the causes of action identified in clause (ii) shall apply to any amended claim under that clause subject to the tolling requirements of paragraph (2)(D)(ii), and any such cause of action shall be deemed timely filed if any Federal statutory cause of action against the electronic communication service provider was timely filed; and

''(iv) for any amended claim under clause (ii) the United States shall be deemed a proper defendant under any statutes described in that clause, and any plaintiff that had standing to proceed against the original defendant shall be deemed an aggrieved party for purposes of proceeding under section 2712 of title 18, United States Code, or section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810).

''(C) DISCOVERY.—

''(i) IN GENERAL.—In a covered civil action in which the United States is substituted as party-defendant under paragraph (2), any plaintiff may serve third-party discovery requests to any electronic communications service provider as to which all claims are dismissed.

''(ii) BINDING THE GOVERNMENT.—If a plaintiff in a covered civil action serves deposition notices under rule 30(b)(6) of the Federal Rules of Civil Procedure or requests for admission under rule 36 of the Federal Rules of Civil Procedure upon an electronic communications service provider as to which all claims were dismissed, the electronic communications service provider shall be deemed a party-defendant for purposes rule 30(b)(6) or rule 36 and its answers and admissions shall be deemed binding upon the Government.

''(b) CERTIFICATIONS.—

''(1) IN GENERAL.—For purposes of substitution proceedings under this section—

''(A) a certification under subsection (a) may be provided and reviewed in camera, ex parte, and under seal; and

''(B) for any certification provided and reviewed as described in subparagraph (A), the court shall not disclose or cause the disclosure of its contents.

''(2) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General or a designee in a position not lower than the Deputy Attorney General.

''(c) SOVEREIGN IMMUNITY.—This section, including any Federal statute cited in this section that operates as a waiver of sovereign immunity, constitute the sole waiver of sovereign immunity with respect to any covered civil action.

''(d) CIVIL ACTIONS IN STATE COURT.—For purposes of section 1441 of title 28, United States Code, any covered civil action that is brought in a State court or administrative or regulatory bodies shall be deemed to arise under the Constitution or laws of the United States and shall be removable under that section.

''(e) RULE OF CONSTRUCTION.—Except as expressly provided in this section, nothing in this section may be construed to limit any immunity, privilege, or defense under any other provision of law, including any privilege, immunity, or defense that would otherwise have been available to the United States absent its substitution as party-defendant or had the United States been the named defendant.

''(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action pending on or filed after the date of enactment of this section.''.

By Mr. SPECTER:

S. 877. A bill to provide for the nondiscretionary Supreme Court review of certain civil actions relating to the legality and constitutionality of surveillance activities; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation that will mandate Supreme Court review of challenges to the warrantless wiretapping program authorized by President Bush after 9/11, commonly known as the Terrorist Surveillance Program or TSP.

While the Supreme Court generally exercises discretion as to whether it will review a case or grant ''certiorari,'' there are precedents for Congress to direct Supreme Court review on constitutional issues—including the statutes forbidding flag burning and requiring Congress to abide by Federal employment laws—and the gravity of this issue merits Congressional action.

In August 2006, Judge Anna Diggs Taylor of the U.S. District Court for

the Eastern District of Michigan issued a 43-page opinion finding the TSP unconstitutional. At the time, many applauded and many others criticized her decision, but we have yet to see appellate review on the merits. Instead, in July 2007, the U.S. Court of Appeals for the 6th Circuit overturned the district court's decision on other grounds. By a 2–1 vote, in ACLU v. NSA, it declined to rule on the legality of the program, finding that the plaintiffs lacked standing to bring the suit. The Supreme Court then declined to hear the case, even though the doctrine of standing has enough flexibility, as demonstrated by the dissent in the 6th Circuit, to have enabled it to take up this fundamental clash between Congress and the President.

With the Supreme Court abstaining, another lone district judge took a stand. In In re National Security Agency Telecommunications Records Litigation, Chief Judge Vaughn Walker in the Northern District of California considered a case brought by an Islamic charity that claims to have been a subject of the surveillance program. In a 56-page opinion he held that Congress's enactment of the Foreign Intelligence Surveillance Act of 1978, FISA, had constrained the President's inherent authority—if any—to conduct warrantless wiretapping: ''Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence surveillance activities to be conducted. Whatever power the executive may otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities.'' Nevertheless, this finding is preliminary.

Whatever Chief Judge Walker ultimately decides, my bill will permit any party who is disaffected by a subsequent decision in the Ninth Circuit to have the case heard by the Supreme Court by eliminating discretionary review. Under my bill, the Supreme Court would also have to review appeals concerning the constitutionality or legality of: the Terrorist Surveillance Program writ large; the statutory immunity for telecommunications providers created by Title II of the FISA Amendments Act of 2008; and any other intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending at such time as the activity was approved by a Federal court.

Relying on similar precedents, the bill requires the High Court to expedite its consideration of such cases. The bill, however, is limited to circumstances where the Court has not previously decided the question at issue. Thus, it does not create a permanent right of review for all similarly situated parties, but it does require the Court to take up the matter in the first instance.

Congress clearly has the power to require appellate review by the Supreme Court under Article III, Section 2 of the Constitution, and it has exercised this prerogative. For example, 28 U.S.C. § 3904 provides for direct appeal to the Supreme Court of decisions ''upon the constitutionality'' of the Congressional Accountability Act if the Court ''has not previously ruled on the question'' and requires the Court to ''expedite the appeal.'' Congress used nearly identical language to provide for direct appeal and expedited Supreme Court review of the constitutionality of a ban on flag burning in 18 U.S.C. § 700.

I propose similar action here. It is hard to conceive of a better case to have finally decided in the Supreme Court than one which challenges the legality of warrantless wiretapping—or the constitutionality of the retroactive statutory defenses passed by Congress last year.

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 printed in the RECORD, as follows:

S. 877

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

SECTION 1. MANDATORY SUPREME COURT REVIEW OF CERTAIN CIVIL ACTIONS.

Chapter 81 of title 28, United States Code, is amended by inserting at the end the following:

''SEC. 1260. MANDATORY SUPREME COURT REVIEW OF CERTAIN CIVIL ACTIONS CONCERNING SURVEILLANCE ACTIVITIES.

''(a) IN GENERAL.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over any appeal of an interlocutory or final judgment, decree, or order of a court of appeals in any case challenging the legality or constitutionality of—

''(1) the President's Surveillance Program, commonly known as the Terrorist Surveillance Program, as defined in section 301(a)(3) of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110–261);

''(2) the statutory defenses established in Section 802(a)(4) of the Foreign Intelligence Surveillance Act of 1978, as amended by title II of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110–261); or

''(3) any intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending at such time as the activity was approved by a Federal court.

''(b) EXPEDITED CONSIDERATION.—The Supreme Court shall advance on the docket any appeal referred to in subsection (a), and expedite the appeal to the greatest extent possible.''.

SEC. 2. CLERICAL AMENDMENT.

The chapter analysis for chapter 81 of title 28, United States Code, is amended by inserting at the end the following:

''Sec. 1260. Mandatory supreme court review of certain civil actions concerning surveillance activities.''.

By Ms. COLLINS (for herself and Mr. LIEBERMAN):

S. 879. A bill to amend the Homeland Security Act to provide immunity for reports of suspected terrorist activity or suspicious behavior and response; to the Committee on the Judiciary.

Ms. COLLINS. Mr. President, the recent terrorist attacks in Mumbai, India, are a sobering reminder that terrorists continue to threaten our Nation and civilized people throughout the world. An alert citizenry is our first line of defense against terrorist attacks, particularly attacks like those in Mumbai. Our laws must protect individuals from frivolous lawsuits when they report, in good faith, suspicious behavior that may indicate terrorist activity. That is why I am introducing legislation, with Senator LIEBERMAN, that will provide these important protections.

In the 2007 homeland security law, Chairman LIEBERMAN and I coauthored a provision to encourage people to report potential terrorist threats directed against transportation systems. This new legislation would expand those protections to reports of suspicious behavior in sectors other than transportation. For example, reports of suspicious activity could be equally important in detecting terrorist plans to attack ''soft targets'' like the hotels, restaurants, and religious institutions targeted in Mumbai.

Real life examples highlight the need for this bill. In December 2008, a Federal jury convicted 5 men from New Jersey of conspiring to murder American soldiers at Fort Dix. According to law enforcement officials, the report of an alert store clerk, who reported that a customer had brought in a video showing men firing weapons and shouting in Arabic, triggered their investigation. But for the report of this vigilant store clerk, law enforcement may not have disrupted this plot against Fort Dix.

That store clerk's action likely saved hundreds of lives. It also reveals a core truth of the dangerous times in which we live. Our safety depends on more than just police officers, intelligence analysts, and soldiers. It also depends on the alertness and civic responsibility of all Americans.

We must encourage citizens to be watchful and to report suspicious activity whenever it occurs. That imperative is even stronger in the aftermath of the November 2008 terrorist attacks in Mumbai, where it appears that the terrorists performed reconnaissance on a number of the targets before the actual attacks.

Senator LIEBERMAN and I recently convened two hearings in the Homeland Security Committee to examine lessons learned from those horrific attacks. These hearings have reinforced our long-standing concern that terrorists might shift their attention from high-value, high-security targets to less secure commercial facilities, where there is the potential for mass casualties and widespread panic. As we witnessed during the three-day siege of Mumbai, commercial facilities or ''soft

targets,'' such as the Taj Mahal, Trident, and Oberoi Hotels, are vulnerable, tempting targets.

Many of the Committee's witnesses during these hearings, including Charles Allen, DHS's Chief Intelligence Officer, Donald Van Duyn, the FBI's Chief Intelligence Officer, New York City Police Commissioner Raymond Kelley, and Al Orlob, Marriott International's Vice President for Corporate Security, endorsed the idea of expanding the 2007 law beyond the transportation sector. Indeed, Commissioner Kelley said that the 2007 law ''made eminently good sense'' and recommended ''that it be expanded [to other sectors] if at all possible.''

Unfortunately, we have seen that our legal system can be used to chill the willingness of citizens to come forward and report possible dangers. As widely reported by the media in 2006, US Airways removed 6 Islamic clerics from a flight after other passengers expressed concerns that some of the clerics had moved out of the their assigned seats and had requested, but were not using, seat belt extenders that could possibly double as weapons. In response to these concerns, US Airways officials removed these individuals from the plane so that they could further investigate.

For voicing their reasonable fears that these passengers could be rehearsing or preparing to execute a hijacking, these honestly concerned travelers found themselves as defendants in a civil rights lawsuit and accused of bigotry. The old adage about how ''no good deed goes unpunished'' is quite apt here.

The existence of this lawsuit clearly illustrates how unfair it is to allow private citizens to be intimidated into silence by the threat of litigation. Would the passengers have spoken up if they had anticipated that there would be a lawsuit filed against them? Even if such suits fail, they can expose citizens to heavy costs in time and legal fees.

The bill we introduce today would provide civil immunity in American courts for any person acting in good faith who reports any suspicious transaction, activity, or occurrence related to an act of terrorism. Specifically, the bill would encourage people to pass on information to Federal officials with responsibility for preventing, protecting against, disrupting, or responding to a terrorist act or to Federal, State, and local law enforcement officials without fear of being sued for doing their civic duty. Only disclosures made to those responsible officials would be protected by the legislation.

Once a report is received, those officials would be responsible for assessing its reasonableness and determining whether further action is required. If they take reasonable action to mitigate the reported threat, they, too, would be protected from lawsuits. Just as we should not discourage reporting suspicious incidents, we also should not discourage reasonable responses to them.

Let me make very clear that this bill does not offer any protection whatsoever if an individual makes a statement that he or she knows to be false. No one will be able to use this protection as cover for mischievous, vengeful, or biased falsehoods.

Our laws and legal system must not be hijacked to intimidate people into silence or to prevent our officials from responding to terrorist threats. Protecting citizens who make good faith reports—and that's an important condition in this bill—of potentially lethal activities is essential to maintaining our homeland security. Our bill offers protection in a measured way that discourages abuses from either side.

Each of us has an important responsibility in the fight against terrorism. It is not a fight that can be left to law enforcement alone. The police simply can't be everywhere. Whether at a hotel, a mall, or an arena, homeland security and law enforcement officials need all citizens to alert them to unattended packages and behavior that appears out of the ordinary.

Many national organizations, such as the Fraternal Order of Police, the National Sheriffs' Association, the National Troopers Coalition, and the National Association of Town Watch, support this legislation.

If someone ''sees something'' suspicious, Congress has an obligation to ensure that he or she will ''say something'' about it. This bill promotes and protects that civic duty. I urge my colleagues to support it.

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

NATIONAL TROOPERS COALITION
March 24, 2009.

Hon. SUSAN COLLINS,
Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS: On behalf of the National Troopers Coalition and its 40,000 members comprised of State Troopers and Highway Patrol Officers, I am writing in support of your efforts to pass the ''See Something, Say Something Act''. We applaud your efforts to keep this country safe.

Our nation is currently at war against terrorists that want to destroy our country and disrupt our way of life. It is vital that we remain vigilant in our efforts to combat terrorism and keep our country safe. The See Something, Say Something Act, will provide necessary liability protections for citizens that report suspicious activity and for law enforcement officers that act upon these reports. We live in a litigious society and one should not be fearful of litigation when determining if he or she should report suspicious activities that could prevent catastrophic loss of life. What we have learned in our efforts to combat terrorism is that everyone needs to remain vigilant and report all suspicious activities.

We support your efforts to provide liability protections for citizens acting in good faith that report suspicious activity. We can not turn a ''blind eye'' to the terrorists we are fighting and we must encourage and support an ever vigilant society.

Respectfully,

A. BRADFORD CARD,
Federal Government Affairs (NTC), for:
Michael Edes, Chairman, National Troopers Coalition.

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, March 24, 2009.

Hon. SUSAN M. COLLINS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: On behalf of the National Sheriffs' Association (NSA), I am writing to express our support for the See Something, Say something Act of 2009.

As you may know, the National Sheriffs' Association is the creator of the Neighborhood Watch Program which is one of the oldest and best-known citizen and law enforcement based crime prevention concepts in the United States. In the late 1960s, an increase in crime heightened the need for a crime prevention initiative focused on residential areas involving local citizens. We responded, creating the National Neighborhood Watch Program in 1972 to assist citizens and law enforcement.

For nearly four decades, particularly after the terrorist attacks in 2001, the nation's sheriffs have witnessed firsthand, citizens becoming more empowered by becoming active in homeland security efforts through participation in Neighborhood Watch. Thus, we understand and recognize the importance of encouraging citizen involvement and the role they play in ensuring homeland security.

The proposed measure would build on this concept by providing the needed legal protections to individuals who report suspicious activity to an authorized official, in good faith, that might reflect terrorist threats. Additionally, it would provide qualified immunity from civil liability for an authorized official who takes reasonable action in good faith to respond to the reported activity.

We thank you for your continued leadership and support of the nation's emergency responders.

Sincerely,

SHERIFF DAVID A. GOAD,
President.

NATIONAL ASSOCIATION OF TOWN WATCH,
Wynnewood, PA, March 24, 2009.

Hon. SUSAN M. COLLINS,
Washington, DC.

DEAR SENATOR COLLINS: On behalf of the National Association of Town Watch (NATW), I am writing to express our support for the See Something, Say Something Act of 2009.

The National Association of Town Watch is a nonprofit, crime prevention organization whose members include citizen crime watch groups, law enforcement agencies and other organizations across the country involved in organized, anticrime activities. NATW also sponsors the annual ''National Night Out'' crime prevention event which has grown to involve over 15,000 communities from all 50 states on the first Tuesday each August.

Since 1981, NATW has always promoted the concept of citizens working in close cooperation with their local law enforcement and serving as ''extra eyes and ears.'' The proposed legislation blends beautifully with NATW's mission. It is critical to legally protect individuals who report suspicious activity to an authorized official, in good faith, that might reflect terrorist threats. This legislation also would provide qualified immunity from civil liability for an authorized official who takes reasonable action in good faith to respond to the reported activity.

We thank you for bringing this legislation forward and for supporting law enforcement

and concerned citizens across our great nation.

Sincerely,

MATT A. PESKIN,
Executive Director.

NATIONAL FRATERNAL ORDER OF POLICE,
Washington, DC, April 22, 2009.

Hon. SUSAN M. COLLINS,
Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR COLLINS, On behalf of the membership of the Fraternal Order of Police, I am writing to advise you of our strong support for the bill you have introduced entitled the ''See Something, Say Something Act.''

Following the terrorist attacks on 11 September 2001 every American, especially law enforcement officers, have become more vigilant. Unfortunately, the increasingly litigious nature of our society may result in many citizens choosing to ''stay out of it''—even if they see something or someone suspicious. Citizens who have reported suspicious activity and law enforcement officers who have acted on these reports have been sued in Federal, State and local courts even though their concerns were reasonable and without malice. The result is that all of us may be more hesitant to report or act upon any suspicious behavior we might see.

Congress took a step in the right direction in 2007 when it passed legislation granting immunity from civil liability for citizens who report suspicious activity and law enforcement officers who act upon such reports involving threats to transportation security. Your bill would expand this immunity to cover all suspicious activity whether it is in a train station, a Federal building, or a sports stadium. This bill will not only protect vigilant individuals from frivolous lawsuits, but it also greatly increases our nation's security.

On behalf of the more than 327,000 members of the Fraternal Order of Police, I would like to thank you again for your leadership on this issue. If I can be of any further assistance, please do not hesitate to contact me, or Executive Director Jim Pasco, in my Washington office.

Sincerely,

CHUCK CANTERBURY,
National President.

By Ms. MURKOWSKI (for herself, Mr. BEGICH, Mr. AKAKA, and Mr. INOUYE):

S. 881. A bill to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, The Tlingit and Haida people, the first people of Southeast Alaska, were perhaps the first group of Alaska natives to organize for the purpose of asserting their aboriginal land claims. The native land claims movement in the rest of Alaska did not gain momentum until the 1960s when aboriginal land titles were threatened by the impending construction of the Trans Alaska Pipeline. In Southeast Alaska, the taking of Native lands for the Tongass National Forest and Glacier Bay National Monument spurred the Tlingit and Haida people to fight to recover their lands in the early part of the 20th Century.

One of the first steps in this battle came with the formation of the Alaska Native Brotherhood in 1912. In 1935, the Jurisdictional Act, which allowed the Tlingit and Haida Indians to pursue their land claims in the U.S. Court of Claims, was enacted by Congress.

After decades of litigation, the native people of Southeast Alaska received a cash settlement in 1968 from the Court of Claims for the land previously taken to create the Tongass National Forest and the Glacier Bay National Monument. Yes, there was a cash settlement of $7.5 million, but the Native people of Southeast Alaska have long believed that it did not adequately compensate them for the loss of their lands and resources.

Beware of the law of unintended consequences. When the native people of Southeast Alaska chose to pursue their land claims in court they could not have foreseen that Congress would ultimately settle the land claims of all of Alaska's native people through the Alaska Native Claims Settlement Act of 1971. Nor could they have foreseen that they would be disadvantaged in obtaining the return of their aboriginal lands because of their early, and ultimately successful, effort to litigate their land claims. Sadly this was the case.

The Alaska Native Claims Settlement Act of 1971 imposed a series of highly prescriptive limitations on the lands that Sealaska Corporation, the regional Alaska Native Corporation formed for Southeast Alaska, could select in satisfaction of the Tlingit and Haida land claim. None of the other 11 Alaska-based regional native corporations were subject to these limitations. Today, I join with my Alaska colleague, Sen. MARK BEGICH, cosponsored by Sens. DANIEL AKAKA and DANIEL INOUYE to introduce legislation to right this wrong.

For the most part, Sealaska Corporation has agreed to live within the constraints imposed by the 1971 legislation. It has taken conveyance of roughly 290,000 acres from the pool of lands it was allowed to select under the 1971 act. As Sealaska moves to finalize its land selections it has asked the Congress for flexibility to receive title to certain lands that it was not permitted to select under the prescriptive, and as Sealaska believes, discriminatory, limitations contained in the 1971 legislation.

The legislation we are introducing today would allow Sealaska to select its remaining entitlement from outside of the withdrawal areas permitted in the 1971 legislation. It allows the Native Corporation to select up to 3,600 acres of its remaining land entitlement from lands with sacred, cultural, traditional or historical significance throughout the Alaska Panhandle. Substantial restrictions will be placed on the use of these lands.

Up to 5,000 acres of land could be selected for non-timber related economic development. These lands are called ''Native Futures'' Sites in the bill. Other lands referred to as ''economic development lands'' in the bill could be used for timber related and non-timber related economic development. These lands are on Prince of Wales Island, on nearby Kosciusko Island.

Sealaska observes that if it were required to take title to lands within the constraints prescribed by the 1971 legislation it would take title to large swaths of roadless acres in pristine portions of the Tongass National Forest. The lands it proposes to take for economic uses under this legislation are predominantly in roaded and less sensitive areas of the Tongass National Forest.

The pools of lands that would be available to Sealaska under this legislation are depicted on a series of maps referred to in the bill. It must be emphasized that not all of the lands depicted on these maps will end up in Sealaska's ownership. Sealaska cannot receive title to lands in excess of its remaining acreage entitlement under the 1971 legislation and this legislation does not change that entitlement.

Early in the 110th Congress, several of our friends in the other body introduced H.R. 3560 to address these issues. Later in September 2008 I introduced legislation similar to this bill to give all parties time to thoroughly review the measure. Over the past two years, Sealaska, and the communities of Southeast Alaska have worked collaboratively in good faith to identify issues that may arise from the transfer of lands on which those communities have relied for subsistence and recreation out of the Tongass National Forest and into native corporation ownership. My colleagues in the Alaska congressional delegation and I have devoted a great deal of time in reaching out and encouraging comment from Southeast Alaska on this new bill. Sealaska has itself conducted numerous public meetings on the bill throughout the region. I believe that these efforts have helped us to formulate a bill that addresses the concerns we most frequently heard.

The legislation we are introducing today in the 111th Congress is different from the original bill in numerous respects. In some cases, the lands open to Sealaska selection have changed from those that were available in the first House bill to accommodate community concerns. For example, this bill, compared to last September's version, reduces the economic development timber land selection pool to about 78,000 acres from 80,000 to protect additional boat anchorages by retention of shoreline timber in Shipley Bay on northern Prince of Wales Island and at Cape Pole on southwest Kosciusko Island. It eliminates the Lacy Cover Native Futures Site on northern Chichagof Island, it provides full public access across sacred sites and historic trail conveyances near Yakutat and Kake. It addresses the concern of the Huna Indian Association for management of sacred sites in Glacier Bay and it deals with a complaint about the original

bill by the U.S. Forest Service. Our conversations have led to precedent setting commitment by the Sealaska Corporation to maintain public access to the economic development lands it receives on Prince of Wales Island for subsistence uses and recreational access. These commitments are laid out in section 4(d) of this bill.

Sealaska also has offered a series of commitments to ensure that the benefits of this legislation flow to the broader Southeast Alaska economy and not just to the Corporation and its native shareholders. These commitments are memorialized in a letter from Sealaska's chairman, Alaska State Senator Albert Kookesh, and its president and chief executive officer, Chris E. McNeil, Jr.

We all hope that after 38 years that this measure can advance to passage this Congress and resolve the last 65,000 to 85,000 acres of entitlement that southeast Alaska's 23,000 Native shareholders have long had a right to receive. It is impossible to expect Alaska's native corporations to provide meaningful assistance to Alaska's native community if they continue to be denied the lands that Congress intended them to receive to utilize to provide economic benefits for the native people's of the State. I hope this measure can pass and become law before the 40th anniversary of the claims settlement act in 2011. Justice delayed truly is justice denied.

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

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

S. 881

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 Alaska Native Land Entitlement Finalization Act''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1)(A) in 1971, Congress enacted the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to recognize and settle the aboriginal claims of Alaska Natives to land historically used by Alaska Natives for traditional, cultural, and spiritual purposes; and

(B) that Act declared that the land settlement ''should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives'';

(2) the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)—

(A) authorized the distribution of approximately $1,000,000,000 and 44,000,000 acres of land to Alaska Natives; and

(B) provided for the establishment of Native Corporations to receive and manage the funds and that land to meet the cultural, social, and economic needs of Native shareholders;

(3) under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611), each Regional Corporation, other than Sealaska Corporation (the Regional Corporation for southeast Alaska) (referred to in this Act as ''Sealaska''), was authorized to receive a share of land based on the proportion that the number of Alaska Native shareholders residing in the region of the Regional Corporation bore to the total number of Alaska Native shareholders, or the relative size of the area to which the Regional Corporation had an aboriginal land claim bore to the size of the area to which all Regional Corporations had aboriginal land claims;

(4)(A) Sealaska, the Regional Corporation for southeast Alaska, 1 of the Regional Corporations with the largest number of Alaska Native shareholders, with more than 21 percent of all original Alaska Native shareholders, did not receive land under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611);

(B) the Tlingit and Haida Indian Tribes of Alaska was 1 of the entities representing the Alaska Natives of southeast Alaska before the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(C) Sealaska did not receive land in proportion to the number of Alaska Native shareholders, or in proportion to the size of the area to which Sealaska had an aboriginal land claim, in part because of a United States Court of Claims cash settlement to the Tlingit and Haida Indian Tribes of Alaska in 1968 for land previously taken to create the Tongass National Forest and Glacier Bay National Monument;

(5) the Court of Claims cash settlement of $7,500,000 did not—

(A) adequately compensate the Alaska Natives of southeast Alaska for the significant quantity of land and resources lost as a result of the creation of the Tongass National Forest and Glacier Bay National Monument or other losses of land and resources; or

(B) justify the significant disparate treatment of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1611);

(6)(A) while each other Regional Corporation received a significant quantity of land under sections 12 and 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1613), Sealaska only received land under section 14(h) of that Act (43 U.S.C. 1613(h)), which provided a 2,000,000-acre land pool from which Alaska Native selections could be made for historic sites, cemetery sites, Urban Corporation land, Native group land, and Native Allotments;

(B) under section 14(h)(8) of that Act (43 U.S.C. 1613(h)(8)), after selections are made under paragraphs (1) through (7) of that section, the land remaining in the 2,000,000-acre land pool is allocated based on the proportion that the original Alaska Native shareholder population of a Regional Corporation bore to the original Alaska Native shareholder population of all Regional Corporations; and

(C) the only land entitlement of Sealaska derives from a proportion of leftover land remaining from the 2,000,000-acre land pool, estimated as of the date of enactment of this Act at approximately 1,700,000 acres;

(7) despite the small land base of Sealaska as compared to other Regional Corporations (less than 1 percent of the total quantity of land allocated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), Sealaska has—

(A) provided considerable benefits to shareholders; and

(B) been a significant economic force in southeast Alaska;

(8) pursuant to the revenue sharing provisions of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(i)), Sealaska has distributed more than $300,000,000 during the period beginning on January 1, 1971, and ending on December 31, 2005, to Native Corporations throughout the State of Alaska from the development of natural resources, which accounts for 42 percent of the total revenues shared under that section during that period;

(9) as a result of the small land entitlement of Sealaska, it is critical that the remaining land entitlement conveyances to Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) are fulfilled to continue to meet the economic, social, and cultural needs of the Alaska Native shareholders of southeast Alaska and the Alaska Native community throughout Alaska;

(10)(A) the conveyance requirements of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) for southeast Alaska limit the land eligible for conveyance to Sealaska to the original withdrawal areas surrounding 10 Alaska Native villages in southeast Alaska, which precludes Sealaska from selecting land located—

(i) in any withdrawal area established for the Urban Corporations for Sitka and Juneau, Alaska; or

(ii) outside the 10 Alaska Native village withdrawal areas; and

(B) unlike other Regional Corporations, Sealaska was not authorized to request land located outside the withdrawal areas described in subparagraph (A) if the withdrawal areas were insufficient to complete the land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(11) 44 percent (820,000 acres) of the 10 Alaska Native village withdrawal areas established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) described in paragraph (10) are composed of salt water and not available for selection;

(12) of land subject to the selection rights of Sealaska, 110,000 acres are encumbered by gubernatorial consent requirements under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(13) the Forest Service and the Bureau of Land Management grossly underestimated the land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), resulting in an insufficient area from which Sealaska could select land suitable for traditional, cultural, and socioeconomic purposes to accomplish a settlement ''in conformity with the real economic and social needs of Natives'', as required under that Act;

(14) the 10 Alaska Native village withdrawal areas in southeast Alaska surround the Alaska Native communities of Yakutat, Hoonah, Angoon, Kake, Kasaan, Klawock, Craig, Hydaburg, Klukwan, and Saxman;

(15) in each withdrawal area, there exist factors that limit the ability of Sealaska to select sufficient land, and, in particular, economically viable land, to fulfill the land entitlement of Sealaska, including factors such as—

(A) with respect to the Yakutat withdrawal area—

(i) 46 percent of the area is salt water;

(ii) 10 sections (6,400 acres) around the Situk Lake were restricted from selection, with no consideration provided for the restriction; and

(iii)(I) 70,000 acres are subject to a gubernatorial consent requirement before selection; and

(II) Sealaska received no consideration with respect to the consent restriction;

(B) with respect to the Hoonah withdrawal area, 51 percent of the area is salt water;

(C) with respect to the Angoon withdrawal area—

(i) 120,000 acres of the area is salt water;

(ii) Sealaska received no consideration regarding the prohibition on selecting land from the 80,000 acres located within the Admiralty Island National Monument; and

(iii)(I) the Village Corporation for Angoon was allowed to select land located outside the withdrawal area on Prince of Wales Island, subject to the condition that the Village Corporation shall not select land located on Admiralty Island; but

(II) no alternative land adjacent to the out-of-withdrawal land of the Village Corporation was made available for selection by Sealaska;

(D) with respect to the Kake withdrawal area—

(i) 64 percent of the area is salt water; and

(ii) extensive timber harvesting by the Forest Service occurred in the area before 1971 that significantly reduced the value of land available for selection by, and conveyance to, Sealaska;

(E) with respect to the Kasaan withdrawal area—

(i) 54 percent of the area is salt water; and

(ii) the Forest Service previously harvested in the area;

(F) with respect to the Klawock withdrawal area—

(i) the area consists of only 5 townships, as compared to the usual withdrawal area of 9 townships, because of the proximity of the Klawock withdrawal area to the Village of Craig, which reduces the selection area by 92,160 acres; and

(ii) the Klawock and Craig withdrawal areas are 35 percent salt water;

(G) with respect to the Craig withdrawal area, the withdrawal area consists of only 6 townships, as compared to the usual withdrawal area of 9 townships, because of the proximity of the Craig withdrawal area to the Village of Klawock, which reduces the selection area by 69,120 acres;

(H) with respect to the Hydaburg withdrawal area—

(i) 36 percent of the area is salt water; and

(ii) Sealaska received no consideration under the Haida Land Exchange Act of 1986 (Public Law No. 99–664; 100 Stat. 4303) for relinquishing selection rights to land within the withdrawal area that the Haida Corporation exchanged to the Forest Service;

(I) with respect to the Klukwan withdrawal area—

(i) 27 percent of the area is salt water; and

(ii) the withdrawal area is only 70,000 acres, as compared to the usual withdrawal area of 207,360 acres, which reduces the selection area by 137,360 acres; and

(J) with respect to the Saxman withdrawal area—

(i) 29 percent of the area is salt water;

(ii) Sealaska received no consideration for the 50,576 acres within the withdrawal area adjacent to the first-class city of Ketchikan that were excluded from selection;

(iii) Sealaska received no consideration with respect to the 1977 amendment to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) requiring gubernatorial consent for selection of 58,000 acres in that area; and

(iv) 23,888 acres are located within the Annette Island Indian Reservation for the Metlakatla Indian Tribe and are not available for selection;

(16) the selection limitations and guidelines applicable to Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)—

(A) are inequitable and inconsistent with the purposes of that Act because there is insufficient land remaining in the withdrawal areas to meet the traditional, cultural, and socioeconomic needs of the shareholders of Sealaska; and

(B) make it difficult for Sealaska to select—

(i) places of sacred, cultural, traditional, and historical significance; and

(ii) Alaska Native futures sites located outside the withdrawal areas of Sealaska;

(17)(A) the deadline for applications for selection of cemetery sites and historic places on land outside withdrawal areas established under section 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1613) was July 1, 1976;

(B)(i) as of that date, the Bureau of Land Management notified Sealaska that the total entitlement of Sealaska would be approximately 200,000 acres; and

(ii) Sealaska made entitlement allocation decisions for cultural sites and economic development sites based on that original estimate;

(C) as a result of the Alaska Land Transfer Acceleration Act (Public Law 108–452; 118 Stat. 3575) and subsequent related determinations and actions of the Bureau of Land Management, Sealaska will receive significantly more than 200,000 acres pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(D) Sealaska would prefer to allocate more of the entitlement of Sealaska to the acquisition of places of sacred, cultural, traditional, and historical significance; and

(E)(i) pursuant to section 11(a)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1610(a)(1)), Sealaska was not authorized to select under section 14(h)(1) of that Act (43 U.S.C. 1613(h)(1)) any site within Glacier Bay National Park, despite the abundance of cultural sites within that Park;

(ii) Sealaska seeks cooperative agreements to ensure that sites within Glacier Bay National Park are subject to cooperative management by Sealaska, Village and Urban Corporations, and federally recognized tribes with ties to the cultural sites and history of the Park; and

(iii) Congress—

(I) recognizes the existence of a memorandum of understanding between the National Park Service and the Hoonah Indian Association;

(II) does not intend to circumvent that memorandum of understanding; and

(III) intends to ensure that the memorandum of understanding and similar mechanisms for cooperative management in Glacier Bay are required by law;

(18)(A) the cemetery sites and historic places conveyed to Sealaska pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) are subject to a restrictive covenant not required by law that does not allow any type of management or use that would in any way alter the historic nature of a site, even for cultural education or research purposes;

(B) historic sites managed by the Forest Service are not subject to the limitations referred to in subparagraph (A); and

(C) those limitations hinder the ability of Sealaska to use the sites for cultural, educational, or research purposes for Alaska Natives and others;

(19) unless Sealaska is allowed to select land outside designated withdrawal areas in southeast Alaska, Sealaska will not be able—

(A) to complete the land entitlement selections of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(B) to secure ownership of places of sacred, cultural, traditional, and historical importance to the Alaska Natives of southeast Alaska;

(C) to maintain the existing resource development and management operations of Sealaska; or

(D) to provide continued economic opportunities for Alaska Natives in southeast Alaska;

(20) in order to realize cultural preservation goals while also diversifying economic opportunities, Sealaska should be authorized to select and receive conveyance of—

(A) sacred, cultural, traditional, and historic sites and other places of traditional cultural significance, including traditional and customary trade and migration routes, to facilitate the perpetuation and preservation of Alaska Native culture and history; and

(B) Alaska Native future sites to facilitate appropriate tourism and outdoor recreation enterprises;

(21) Sealaska has played, and is expected to continue to play, a significant role in the health of the southeast Alaska economy;

(22)(A) the rate of unemployment in southeast Alaska exceeds the statewide rate of unemployment on a non-seasonally adjusted basis; and

(B) in January 2008, the Alaska Department of Labor and Workforce Development reported the unemployment rate for the Prince of Wales–Outer Ketchikan census area at 20 percent;

(23) many southeast Alaska communities—

(A) are dependent on high-cost diesel fuel for the generation of energy; and

(B) desire to diversify their energy supplies with wood biomass alternative fuel and other renewable and alternative fuel sources;

(24) if the resource development operations of Sealaska cease on land appropriate for those operations, there will be a significant negative impact on—

(A) southeast Alaska Native shareholders;

(B) the cultural preservation activities of Sealaska;

(C) the economy of southeast Alaska; and

(D) the Alaska Native community that benefits from the revenue-sharing requirements under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(25) on completion of the conveyances of land to Sealaska to fulfill the full land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the encumbrances on 327,000 acres of Federal land created by the withdrawal of land for selection by Native Corporations in southeast Alaska would be removed, which will facilitate thorough and complete planning and efficient management relating to national forest land in southeast Alaska by the Forest Service.

(b) PURPOSE.—The purpose of this Act is to address the inequitable treatment of Sealaska by allowing Sealaska to select the remaining land entitlement of Sealaska under section 14 of the Alaska Native Claims Settlement Act (43 U.S.C. 1613) from designated Federal land in southeast Alaska located outside the 10 southeast Alaska Native village withdrawal areas.

SEC. 3. SELECTIONS IN SOUTHEAST ALASKA.

(a) SELECTION BY SEALASKA.—

(1) IN GENERAL.—Notwithstanding section 14(h)(8)(B) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)(B)), Sealaska is authorized to select and receive conveyance of the remaining land entitlement of Sealaska under that Act (43 U.S.C. 1601 et seq.) from Federal land located in southeast Alaska from each category described in subsection (b).

(2) NATIONAL PARK SERVICE.—The National Park Service is authorized to enter into a cooperative management agreement described in subsection (c)(2) for the purpose, in part, of recognizing and perpetuating the values of the National Park Service, including those values associated with the Tlingit homeland and culture, wilderness, and ecological preservation.

(b) CATEGORIES.—The categories referred to in subsection (a) are the following:

(1)(A) Economic development land from the area of land identified on the map entitled ''Sealaska ANCSA Land Entitlement Rationalization Pool'', dated March 9, 2009, and labeled ''Attachment A''.

(B) A nonexclusive easement to Sealaska to allow—

(i) access on the forest development road and use of the log transfer site identified in paragraphs (3)(c) and (3)(d) of the patent numbered 50–85–0112 and dated January 4, 1985;

(ii) access on the forest development road identified in paragraphs (2)(a) and (2)(b) of the patent numbered 50–92–0203 and dated February 24, 1992; and

(iii) access on the forest development road identified in paragraph (2)(a) of the patent numbered 50–94–0046 and dated December 17, 1993.

(2) Sites with sacred, cultural, traditional, or historic significance, including traditional and customary trade and migration routes, archeological sites, cultural landscapes, and natural features having cultural significance, subject to the condition that—

(A) not more than 2,400 acres shall be selected for this purpose, from land identified on—

(i) the map entitled ''Places of Sacred, Cultural, Traditional and Historic Significance'', dated March 9, 2009, and labeled ''Attachment B''; and

(ii) the map entitled ''Traditional and Customary Trade and Migration Routes'', dated March 9, 2009, and labeled ''Attachment C'', which includes an identification of—

(I) a conveyance of land 25 feet in width, together with 1-acre sites at each terminus and at 8 locations along the route, with the route, location, and boundaries of the conveyance described on the map inset entitled ''Yakutat to Dry Bay Trade and Migration Route'', dated March 9, 2009, and labeled ''Attachment C'';

(II) a conveyance of land 25 feet in width, together with 1-acre sites at each terminus, with the route, location, and boundaries of the conveyance described on the map inset entitled ''Bay of Pillars to Port Camden Trade and Migration Route'', dated March 9, 2009, and labeled ''Attachment C''; and

(III) a conveyance of land 25 feet in width, together with 1-acre sites at each terminus, with the route, location, and boundaries of the conveyance described on the map inset entitled ''Portage Bay to Duncan Canal Trade and Migration Route,'' dated March 9, 2009, and labeled ''Attachment C''; and

(B) an additional 1,200 acres may be used by Sealaska to acquire places of sacred, cultural, traditional, and historic significance, archeological sites, traditional, and customary trade and migration routes, and other sites with scientific value that advance the understanding and protection of Alaska Native culture and heritage that—

(i) as of the date of enactment of this Act, are not fully identified or adequately documented for cultural significance; and

(ii) are located outside of a unit of the National Park System.

(3) Alaska Native futures sites with traditional and recreational use value, as identified on the map entitled ''Native Futures Sites'', dated March 9, 2009, and labeled ''Attachment D'', subject to the condition that not more than 5,000 acres shall be selected for those purposes.

(c) SITES IN CONSERVATION SYSTEM UNITS.—

(1) IN GENERAL.—No site with sacred, cultural, traditional, or historic significance that is identified in the document labeled ''Attachment B'' and located within a unit of the National Park System shall be conveyed to Sealaska pursuant to this Act.

(2) COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—The Director of the National Park Service shall offer to enter into a cooperative management agreement with Sealaska, other Village Corporations and Urban Corporations, and federally recognized Indian tribes with cultural and historical ties to Glacier Bay National Park, in accordance with the requirements of subparagraph (B).

(B) REQUIREMENTS.—A cooperative agreement under this paragraph shall—

(i) recognize the contributions of the Alaska Natives of southeast Alaska to the history, culture, and ecology of Glacier Bay National Park and the surrounding area;

(ii) ensure that the resources within the Park are protected and enhanced by cooperative activities and partnerships among federally recognized Indian tribes, Village Corporations and Urban Corporations, Sealaska, and the National Park Service;

(iii) provide opportunities for a richer visitor experience at the Park through direct interactions between visitors and Alaska Natives, including guided tours, interpretation, and the establishment of culturally relevant visitor sites; and

(iv) provide appropriate opportunities for ecologically sustainable visitor-related education and cultural interpretation within the Park—

(I) in a manner that is not in derogation of the purposes and values of the Park (including those values associated with the Park as a Tlingit homeland); and

(II) in a manner consistent with wilderness and ecological preservation.

(C) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director of the National Park Service shall submit to Congress a report describing each activity for cooperative management of each site described in subparagraph (A) carried out under a cooperative agreement under this paragraph.

SEC. 4. CONVEYANCES TO SEALASKA.

(a) TIMELINE FOR CONVEYANCE.—

(1) IN GENERAL.—Not later than 1 year after the date of selection of land by Sealaska under paragraphs (1) and (3) of section 3(b), the Secretary of the Interior (referred to in this Act as the ''Secretary'') shall complete the conveyance of the land to Sealaska.

(2) SIGNIFICANT SITES.—Not later than 2 years after the date of selection of land by Sealaska under section 3(b)(2), the Secretary shall complete the conveyance of the land to Sealaska.

(b) EXPIRATION OF WITHDRAWALS.—On completion of the selection by Sealaska and the conveyances to Sealaska of land under subsection (a) in a manner that is sufficient to fulfill the land entitlement of Sealaska under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)—

(1) the original withdrawal areas set aside for selection by Native Corporations in southeast Alaska under that Act (as in effect on the day before the date of enactment of this Act) shall be rescinded; and

(2) land located within a withdrawal area that is not conveyed to a southeast Alaska Regional Corporation or Village Corporation shall be returned to the unencumbered management of the Forest Service as a part of the Tongass National Forest.

(c) LIMITATION.—Sealaska shall not select or receive under this Act any conveyance of land pursuant to paragraph (1) or (3) of section 3(b) located within—

(1) any conservation system unit;

(2) any federally designated wilderness area; or

(3) any land use designation I or II area.

(d) APPLICABLE EASEMENTS AND PUBLIC ACCESS.—

(1) IN GENERAL.—The conveyance to Sealaska of land pursuant to paragraphs (1) and (2)(A)(ii) of section 3(b) that is located outside a withdrawal area designated under section 16(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1615(a)) shall be subject to—

(A) a reservation for easements for public access on the public roads depicted on the document labeled ''Attachment E'' and dated March 9, 2009;

(B) a reservation for easements along the temporary roads designated by the Forest Service as of the date of enactment of this Act for the public access trails depicted on the document labeled ''Attachment E'' and dated March 9, 2009;

(C) any valid preexisting right reserved pursuant to section 14(g) or 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)); and

(D)(i) the right of noncommercial public access for subsistence uses, consistent with title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111 et seq.), and recreational access without liability to Sealaska; and

(ii) the right of Sealaska to regulate access for public safety, cultural, or scientific purposes, environmental protection, and uses incompatible with natural resource development, subject to the condition that Sealaska shall post on any applicable property, in accordance with State law, notices of any such condition.

(2) EFFECT.—No right of access provided to any individual or entity (other than Sealaska) by this subsection—

(A) creates any interest of such an individual or entity in the land conveyed to Sealaska in excess of that right of access; or

(B) provides standing in any review of, or challenge to, any determination by Sealaska regarding the management or development of the applicable land.

(e) CONDITIONS ON SACRED, CULTURAL, AND HISTORIC SITES.—The conveyance to Sealaska of land selected pursuant to section 3(b)(2)—

(1) shall be subject to a covenant prohibiting any commercial timber harvest or mineral development on the land;

(2) shall not be subject to any additional restrictive covenant based on cultural or historic values, or any other restriction, encumbrance, or easement, except as provided in sections 14(g) and 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)); and

(3) shall allow use of the land as described in subsection (f).

(f) USES OF SACRED, CULTURAL, TRADITIONAL, AND HISTORIC SITES.—Any sacred, cultural, traditional, or historic site or trade or migration route conveyed pursuant to this Act may be used for—

(1) preservation of cultural knowledge and traditions associated with such a site;

(2) historical, cultural, and scientific research and education;

(3) public interpretation and education regarding the cultural significance of those sites to Alaska Natives;

(4) protection and management of the site to preserve the natural and cultural features of the site, including cultural traditions, values, songs, stories, names, crests, and clan usage, for the benefit of future generations; and

(5) site improvement activities for any purpose described in paragraphs (1) through (4), subject to the condition that the activities are consistent with the sacred, cultural, traditional, or historic nature of the site.

(g) TERMINATION OF RESTRICTIVE COVENANTS.—

(1) IN GENERAL.—Each restrictive covenant regarding cultural or historical values with respect to any interim conveyance or patent for a historic or cemetery site issued to

Sealaska pursuant to the regulations contained in sections 2653.3 and 2653.11 of title 43, Code of Federal Regulations (as in effect on the date of enactment of this Act), in accordance with section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)), terminates on the date of enactment of this Act.

(2) REMAINING CONDITIONS.—Land subject to a covenant described in paragraph (1) on the day before the date of enactment of this Act shall be subject to the conditions described in subsection (e).

(3) RECORDS.—Sealaska shall be responsible for recording with the land title recorders office of the State of Alaska any modification to an existing conveyance of land under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) as a result of this Act.

(h) CONDITIONS ON ALASKA NATIVE FUTURES LAND.—Each conveyance of land to Sealaska selected under section 3(b)(3) shall be subject only to—

(1) a covenant prohibiting any commercial timber harvest or mineral development; and

(2) the restrictive covenants, encumbrances, or easements under sections 14(g) and 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)).

SEC. 5. MISCELLANEOUS.

(a) STATUS OF CONVEYED LAND.—Each conveyance of Federal land to Sealaska pursuant to this Act, and each action carried out to achieve the purpose of this Act, shall be considered to be conveyed or acted on, as applicable, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(b) ENVIRONMENTAL MITIGATION AND INCENTIVES.—Notwithstanding subsection (e) and (h) of section 4, all land conveyed to Sealaska pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and this Act shall be considered to be qualified to receive or participate in, as applicable—

(1) any federally authorized carbon sequestration program, ecological services program, or environmental mitigation credit; and

(2) any other federally authorized environmental incentive credit or program.

(c) NO MATERIAL EFFECT ON FOREST PLAN.—

(1) IN GENERAL.—The implementation of this Act, including the conveyance of land to Sealaska, alone or in combination with any other factor, shall not require an amendment of, or revision to, the Tongass National Forest Land and Resources Management Plan before the first revision of that Plan scheduled to occur after the date of enactment of this Act.

(2) BOUNDARY ADJUSTMENTS.—The Secretary of Agriculture shall implement any land ownership boundary adjustments to the Tongass National Forest Land and Resources Management Plan resulting from the implementation of this Act through a technical amendment to that Plan.

(d) NO EFFECT ON EXISTING INSTRUMENTS, PROJECTS, OR ACTIVITIES.—

(1) IN GENERAL.—Nothing in this Act or the implementation of this Act revokes, suspends, or modifies any permit, contract, or other legal instrument for the occupancy or use of Tongass National Forest land, or any determination relating to a project or activity that authorizes that occupancy or use, that is in effect on the day before the date of enactment of this Act.

(2) TREATMENT.—The conveyance of land to Sealaska pursuant to this Act shall be subject to the instruments and determinations described in paragraph (1) to the extent that those instruments and determinations authorize occupancy or use of the land so conveyed.

(e) TECHNICAL CORRECTIONS.—

(1) TRIBAL FOREST PROTECTION.—Section 2(a)(2) of the Tribal Forest Protection Act of 2004 (25 U.S.C. 3115a(a)(2)) is amended—

(A) in subparagraph (A), by inserting ‘‘, or is conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)’’ before the semicolon; and

(B) in subparagraph (B)(i)—

(i) in subclause (I), by striking ‘‘or’’ at the end; and

(ii) by adding at the end the following:

‘‘(III) is owned by an Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and is forest land or formerly had a forest cover or vegetative cover that is capable of restoration; or’’.

(2) NATIONAL HISTORIC PRESERVATION.—Section 301 of the National Historic Preservation Act (16 U.S.C. 470w) is amended by striking paragraph (14) and inserting the following:

‘‘(14)(A) ‘Tribal lands’ means—

‘‘(i) all land within the exterior boundaries of any Indian reservation;

‘‘(ii) all dependent Indian communities; and

‘‘(iii) land held by an incorporated Alaska Native group, a Regional Corporation, or a Village Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

‘‘(B) Nothing in this paragraph validates, invalidates, or otherwise affects any claim regarding the existence of Indian country (as defined in section 1151 of title 18, United States Code) in the State of Alaska.’’.

SEC. 6. MAPS.

(a) AVAILABILITY.—Each map referred to in this Act shall be maintained on file in—

(1) the office of the Chief of the Forest Service; and

(2) the office of the Secretary.

(b) CORRECTIONS.—The Secretary or the Chief of the Forest Service may make any necessary correction to a clerical or typographical error in a map referred to in this Act.

(c) TREATMENT.—No map referred to in this Act shall be considered to be an attempt by the Federal Government to convey any State or private land.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act and the amendments made by this Act.

By Mr. REID (for Mr. KENNEDY (for himself and Mr. GRASSLEY):

S. 882. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure the safety and quality of medical products and enhance the authorities of the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor and Pensions.

Mr. GRASSLEY. Mr. President, over the last 5 years I have conducted extensive oversight of the Food and Drug Administration. As a result of my oversight activities, I identified serious problems at the FDA that included: the quashing of scientific opinion within the agency; delays in informing the public of emerging safety problems; too cozy a relationship between the FDA and the industries it is supposed to regulate; and a failure to be adequately transparent and accountable to the public.

The FDA will require strong leadership to rebuild public confidence and tackle the cultural and organizational problems that have plagued the agency.

Strong leadership alone, however, will not fix all the problems.

The agency needs additional tools, resources, and authorities to fulfill its mission of protecting the health and safety of the American people.

In September 2007, the Congress passed the Food and Drug Administration Amendments Act to provide FDA some of the needed tools, resources, and authorities.

This legislation was a positive step forward in strengthening the agency and restoring the public's trust in the FDA, but Congress's work is not done.

Today, I am here to talk about another FDA bill.

In the summer of 2007, I started examining FDA's program for inspections of foreign pharmaceutical manufacturing plants.

I expressed concerns to the FDA regarding, among other things, inspection funding, emerging exporters, and severe weaknesses in the inspection process.

An increasing amount of the drugs and active pharmaceutical ingredients Americans use are being manufactured in foreign countries, primarily in China and India.

Yet as reported by the Government Accountability Office in November 2007, the Food and Drug Administration does not know how many foreign establishments are subject to inspection and the agency conducts relatively few foreign inspections each year.

According to the FDA, from fiscal year 2002 through fiscal year 2007, the agency conducted fewer than 1,400 inspections of foreign pharmaceutical facilities.

And these inspections were often conducted in countries with few reported quality concerns.

In China, the world's largest producer of active pharmaceutical ingredients, and where we have seen increasing reports of contaminated products, only 11 inspections were conducted during fiscal year 2007—that is way too few.

During the same year, FDA conducted 14 inspections in Switzerland, 18 in Germany, and 24 in France—all countries with advanced regulatory infrastructures.

In addition, FDA officials estimated that the agency inspected foreign class II device makers every 27 years and foreign class III device makers every 6 years.

Class III devices are devices that support or sustain human life or present a potentially unreasonable risk of illness or injury, such as pacemakers and heart defibrillators.

In January 2008, we saw too well what happens when we have a broken inspection system.

Baxter International Inc. temporarily suspended production of its

blood thinner Heparin because of an increase in reports of adverse events that may be associated with its drug. Then recalls were announced. There were serious concerns about whether or not this country would have enough Heparin to meet patient needs as a result of the contamination. After several months, FDA's investigation found that the active ingredient in Heparin, which was made at a facility in China, was contaminated. And the serious adverse events in patients who received Heparin were linked to the contaminated blood thinner.

The recalls and investigation of contaminated Heparin highlighted significant weaknesses in FDA's oversight of the production and supply chain and emphasized the need to improve FDA's protection of the safety of products made in this country and abroad.

The FDA is charged with ensuring the safety and efficacy of drugs, pharmaceutical ingredients, and devices produced around the world despite its inadequate budget for inspections, in particular foreign inspections.

It is troubling that the FDA is grossly under-resourced at a time when foreign production of drugs and active pharmaceutical ingredients is growing at record rates.

Last Congress, I introduced the Drug and Device Accountability Act of 2008 with Senator KENNEDY, chairman of the Committee on Health, Education, Labor, and Pensions. The Congress did not have an opportunity to act on that legislation. So today Senator KENNEDY and I are introducing the Drug and Device Accountability Act of 2009.

Senator KENNEDY is not able to join me on the Senate floor, but I thank him for his cooperation and work with my office on this important legislation.

I also want to take this opportunity to express my appreciation for his commitment and efforts over the years to reform and improve the FDA.

I am going to spend the next few minutes highlighting some of the things the Drug and Device Accountability Act of 2009 would do.

This bill would augment FDA's resources through the collection of inspection fees.

It also expands the agency's authority for ensuring the safety of drugs and medical devices, including foreign manufactured drugs and devices by expanding FDA's authority to inspect foreign manufacturers and importers; allowing the FDA to issue subpoenas; and allowing the FDA to detain a device or drug when its inspectors have reason to believe the product is adulterated or misbranded.

In addition, the bill would require individuals responsible for submitting a drug or device application or a report related to safety or efficacy to certify that the application or report complies with applicable regulations and is not false or misleading. Civil as well as criminal penalties could be imposed for false or misleading certifications.

I believe this is an important provision given the troubling findings over the last few years; that is, that some companies have withheld important safety information from the FDA or buried that information in their submissions to the agency.

In addition, in light of recent serious allegations that have been raised by scientists within the FDA regarding the agency's handling of medical device reviews, the bill calls for an Institute of Medicine study to examine FDA's system for clearing and approving devices for marketing.

During President Obama's weekly address last month, the President stated, ''There are certain things only a government can do. And one of those things is ensuring that the foods we eat, and the medicines we take, are safe and do not cause us harm.''

I concur, and the Drug and Device Accountability Act is an opportunity for Congress to help FDA do a better job of ensuring that our increasingly foreign-produced drug and device supply is safe and effective.

I look forward to working with my colleagues in the Senate and with the Obama administration to ensure that FDA has the necessary tools and resources to meet its oversight responsibilities.

By Mr. KERRY (for himself and Mr. GRAHAM):

S. 883. A bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history; to the Committee on Banking, Housing, and Urban Affairs.

Mr. KERRY. Mr. President, today along with Senator GRAHAM, I am introducing the Medal of Honor Commemorative Coin Act of 2009 to assist the Congressional Medal of Honor Foundation in raising the funds it needs to promote the qualities which the Medal of Honor embodies—courage, sacrifice, selfless service, and patriotism.

The Medal of Honor was first authorized by Congress in 1861 and represents our Nation's highest award for valor in action against an enemy force. The medal symbolizes the value we, as a Nation, place on the power of one individual to make a difference in extraordinary circumstances through selfless actions of bravery. Although the Medal of Honor was created for the Civil War, Congress made it a permanent decoration in 1863. Since then, fewer than 3,500 Medals of Honor have been awarded to members of the U.S. Armed Forces—approximately half during the Civil War. Today, there are only 111 living recipients. These select few exemplify the values of our great nation through their incredible acts of bravery and commitment to our country.

The Congressional Medal of Honor Foundation was formed in 1999. This 501(c)(3) not-for-profit organization promotes heroism and selflessness among our Nation's youth by perpetuating the Medal of Honor's legacy through increased awareness, education, scholarships, behavior, and example. The commemorative coins will be legal tender, emblematic of the spirit of the Medal of Honor, giving the holder a physical reminder of the American tradition of selfless service and sacrifice. These coins will be minted for the year 2011, marking the 150th anniversary of the Medal of Honor's initial authorization by Congress.

Today, in Iraq and Afghanistan, American soldiers not only serve their country selflessly but do so in an exemplary manner. In this time of war and sacrifice it is of utmost importance that we show the people fighting for their country how much we value their service.

This is the medal won by Sergeant First Class Paul R. Smith. Under attack at the Baghdad International Airport, Sergeant Smith quickly organized the defense on the ground to engage a company-sized enemy force. He showed no concern for his own personal safety when he mounted a personnel carrier and manned a .50 caliber machine gun while under fire from the enemy and was mortally wounded in doing so. His valor lead to the defeat of the enemy and saved the lives of numerous injured members of his platoon.

This is the medal won by Captain Humbert Roque Versace. During an intense attack by the Viet Cong in the Xuyen Providence Captain Versace was wounded while engaging the enemy. Although he fought against capture through injury and hostility he was taken prisoner. While incarcerated Captain Versace exemplified the Code of Conduct as a prisoner of war, attempted to escape three times and never gave in to the brutal interrogations all while maintaining command over his fellow American soldiers that were also imprisoned setting an extraordinary example.

This is the medal won by Marine Corps Second Lieutenant Robert Dale Reem, who on the night of November 6, 1950, after leading three separate assaults on an enemy position in the vicinity of Chinhung-ni, Korea, threw himself on top of an enemy grenade that landed amidst his men.

Since 1863 this country has been honoring its greatest heroes by decorating them with the Congressional Medal of Honor. This is an elite group of men and women who make us proud everyday of the U.S. Armed Forces and the protection they afford us. We should show our thanks in the best manner possible.

I ask all my colleagues to support this legislation.

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

S. 884. A bill to amend title 23, United States Code, to remove privatized highway miles as a factor in apportioning highway funding; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, when our States and cities lease their tolled highways to private parties, American taxpayers almost always experience significant fee increases at the toll booth. But our taxpayers' contribution does not end there. Under current tax law, the Federal Treasury subsidizes private lessors through exceedingly generous depreciation and amortization deductions. Meanwhile, Federal funding continues to flow to the state government—as though the highway had never been privatized. Today, I rise to introduce two bills that would put an end to this fleecing of the American taxpayer. I am pleased that Senator GRASSLEY, the Ranking Member of the Senate Finance Committee, is joining me in introducing both bills.

I'd like to take a moment to set the stage, by explaining where we find ourselves. There is no denying the seriousness of our nation's surface transportation funding challenges. Among the solutions that have been offered are so-called Public-Private Partnerships, or PPPs. Under one PPP model, a state or local government leases existing highways to a private party, often on a very long-term basis. We have already seen two existing highways sold off to private companies. In 2004, Chicago sold Macquarie of Australia concession rights to the Chicago Skyway for 99 years, in exchange for $1.8 billion. In 2006, Indiana sold concession rights to the Indiana Toll Road to a partnership between Cintra of Spain and Macquarie for 75 years, in exchange for $3.8 billion. Both deals have generated significant interest from the press and the financial community. Now, investors are approaching state and local governments across the country, seeking a piece of what is believed to be a very lucrative pie. For instance, last year Governor Ed Rendell proposed a $12.8 billion deal for a 75-year sale of concession rights to the Pennsylvania Turnpike, which, if ratified, would represent the largest privatization of highway infrastructure in U.S. history.

While I agree that States should have some latitude to determine how to operate their own highways, that doesn't mean that the Federal taxpayer should subsidize leasing these highways. But as we uncovered at a Finance Subcommittee on Energy, Natural Resources and Infrastructure hearing that I convened last year, the Federal government—and taxpayers in all states—now subsidizes these PPPs through exceedingly generous tax provisions. To take advantage of the Tax Code's 15-year cost recovery period for highway infrastructure, a private lessor must obtain constructive ownership of the road. Constructive ownership is generally attained by entering a lease that exceeds the 45-year period that the Bureau of Economic Affairs, BEA, says is a road's ''useful life.'' Once they attain this constructive ownership, the private lessor can recover most of its costs over the first 15 years of the lease—or one-third as long as BEA says the highway infrastructure can be expected to last. The end result? Private operators demand exceptionally long lease lengths, to ensure they can take advantage of the Tax Code's subsidy.

These Tax Code provisions are of interest not just because the Senate must prudently shepherd our Nation's tax revenues, but also because there are considerable transportation policy dangers to these very long-term leases. Chicago signed a 99-year lease for the Skyway, a road that, at the time of the lease, had only a 47 operating history. Indiana signed a 75-year lease for its Toll Road, a highway that, at the time of the lease, had only a 49 history. With respect to a critical artery of transportation, how can a State or city possibly predict its future needs for a period that is twice that artery's operating history? It is impossible to envision how transportation will change in the next hundred years. As a point of reference, the Model T is 101 years old—can we even pretend to imagine what the next century will bring? These very long lease lengths are all the more troubling because these deals often contain non-compete clauses, which make it difficult for public transportation agencies to address safety and congestion problems on highways and adjacent streets.

It is true that private lessors are merely following the letter of the law. But when cost-recovery rules subsidize forms of investment that contravene the public interest, Congress should change those rules. Indeed, public policy concerns have already led Congress to alter cost-recovery rules for other assets, such as luxury cars, sport utility vehicles, and sports franchises.

Senator GRASSLEY and I agree that to protect the American taxpayer, such an alteration is also necessary here. It's time for the tax tail to stop wagging the dog, by cutting off Federal tax subsidies to companies that privatize existing American highways. Our first bill, the Transportation Access for All Americans Act, would do just that. It would allow a private operator of an existing highway to depreciate costs associated with tangible highway infrastructure on a 45-year period, in line with Bureau of Economic Analysis estimates, and to amortize the intangible right to collect tolls on a schedule that is no shorter than the lease's actual length. By making these changes to the Tax Code, our bill eliminates the unjustifiable subsidy that the U.S. taxpayer is now asked to provide directly to the private operators.

Our second bill, S. 885, the Transportation Equity for All Americans Act, deals with the highway funding that is provided for a privatized road. As I understand it, when a road is privatized, all responsibility for maintaining the road, collecting tolls, paying the investors' profit, and so forth are taken on by the private entity. It simply makes no sense that the road should continue to qualify for highway funding if the road is privately operated. Similarly, it makes no sense that the formulae that distribute the Federal highway funding should reflect any credit for privatized roads—it would be like the users paying twice, once at the toll booth and again in the taxes they already pay to use the Nation's highways.

Under current law, all roads, including interstate highways, national highways, and other major state and local roads in the federal-aid system are included in the calculation of the federal highway funds. The lane-miles and vehicle-miles-traveled on all these roads are used directly to apportion the federal highway funds for the Interstate Maintenance Program, the National Highway Program, and the Surface Transportation Program. The calculation currently includes roads that are publicly or privately operated. Our second bill is very simple; it subtracts from these calculations the lane-miles and vehicle-miles-traveled for any privatized highway, thus eliminating the double payments. The bill also corrects the Equity Bonus program to reflect properly the changes in the formula calculations.

This year Congress must reauthorize the Federal surface transportation programs. I look forward to working with Finance Chairman BAUCUS and Senator GRASSLEY and EPW Chairman BOXER and Senator INHOFE to complete a new transportation bill that meets the needs of my State and the Nation.

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

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

S. 884

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 ''Transportation Equity for All Americans Act''.

SEC. 2. REMOVAL OF PRIVATIZED HIGHWAY MILES.

(a) IN GENERAL.—Section 104(b) of title 23, United States Code, is amended by adding at the end the following:

''(6) PRIVATIZED HIGHWAY MILES.—

''(A) DEFINITION OF PRIVATIZED HIGHWAY.—In this paragraph, the term 'privatized highway' means a highway subject to an agreement giving a private entity—

''(i) control over the operation of the highway; and

''(ii) ownership over the toll revenues collected from the operation of the highway.

''(B) EXCLUSION.—For the purposes of paragraphs (1), (3), and (4), the lane miles and vehicle miles traveled on a privatized highway

that is otherwise an included highway shall be excluded from consideration as factors in the formula for apportionment of funds under this title.''.

(b) EQUITY BONUS.—Section 105 of title 23, United States Code, is amended by adding at the end the following:

''(g) PRIVATIZED HIGHWAYS.—Calculations under this section shall be made without taking into account the exclusion under section 104(b)(6) of certain lane miles and vehicle miles traveled from consideration as factors in the formula for apportionment of funds pursuant to this title.''.

BILL SUMMARY—TRANSPORTATION ACCESS FOR ALL AMERICANS ACT

The Internal Revenue Code generally characterizes a lease of assets as an outright purchase of those assets if the lessee has acquired all the benefits and burdens of ownership for a term that significantly exceeds their expected remaining useful life (as generally determined by the Bureau of Economic Analysis). The Bureau of Economic Analysis estimates the service life of highways and streets to be 45 years. For Federal income tax purposes, a lessor with such constructive ownership is allowed to recover its costs through depreciation and amortization deductions. Notwithstanding BEA's 45-year estimate, the Tax Code currently permits the value of the lease of tangible infrastructure to be depreciated on a 15-year schedule, on a 150% declining-balance basis. The intangible franchise right to collect tolls is currently recovered over a 15-year period, regardless of the lease length. The Act would amend Section 168(g)(2) of the Internal Revenue Code so that a taxpayer that leases an existing highway on a sufficiently longterm basis can depreciate the tangible infrastructure on a 45-year schedule, on a straight-line basis. The Act would also amend Section 197(f) of the Internal Revenue Code so that the lessor of an existing highway can amortize the intangible franchise right to collect tolls over the greater of a 15-year period or the actual length of the lease.

BILL SUMMARY—TRANSPORTATION EQUITY FOR ALL AMERICANS ACT

The bill would amend sections 104(b) and 105 of title 23, USC, pertaining to Federal-aid highways apportionment factors and the equity bonus program. Section 104(b) provides the manner in which the Secretary apportions the sums authorized to be appropriated for expenditure on the Interstate and National Highway System program, the Congestion Mitigation and Air Quality Improvement program, the highway safety improvement program, and the Surface Transportation program for that fiscal year, among the several States. The amendment to section 104(b) would remove lane miles and vehicle miles traveled on a ''privatized highway'' from the formula factors for the National Highway System, the Surface Transportation program, and the Interstate Maintenance component.

Section 105, the equity bonus program, provides that the Secretary allocate among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for specific programs that is less than the calculated State percentage. The amendment to section 105 would provide that, notwithstanding section 104(b)(6), lane miles and vehicle miles traveled on a ''privatized highway'' are not excluded from the calculations under this section.

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

S. 885. A bill to amend the Internal Revenue Code of 1986 to provide special depreciation and amortization rules for highway and related property subject to long-term leases, and for other purposes; to the Committee of Finance.

Mr. BINGAMAN. 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. 885

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 ''Transportation Access for All Americans Act''.

SEC. 2. DEPRECIATION AND AMORTIZATION RULES FOR HIGHWAY AND RELATED PROPERTY SUBJECT TO LONG-TERM LEASES.

(a) ACCELERATED COST RECOVERY.—

(1) IN GENERAL.—Section 168(g)(1) of the Internal Revenue Code of 1986 (relating to alternative depreciation system for certain property) is amended by striking ''and'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any applicable leased highway property,''.

(2) RECOVERY PERIOD.—The table contained in subparagraph (C) of section 168(g)(2) of such Code is amended by redesignating clause (iv) as clause (v) and by inserting after clause (iii) the following new clause:

''(iv) Applicable leased highway property ..... 45 years.''.

(3) APPLICABLE LEASED HIGHWAY PROPERTY DEFINED.—

(A) IN GENERAL.—Section 168(g) of such Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) APPLICABLE LEASED HIGHWAY PROPERTY.—For purposes of paragraph (1)(E)—

''(A) IN GENERAL.—The term 'applicable leased highway property' means property to which this section otherwise applies which—

''(i) is subject to an applicable lease, and

''(ii) is placed in service before the date of such lease.

''(B) APPLICABLE LEASE.—The term 'applicable lease' means a lease or other arrangement—

''(i) which is between the taxpayer and a State or political subdivision thereof, or any agency or instrumentality of either, and

''(ii) under which the taxpayer—

''(I) leases a highway and associated improvements,

''(II) receives a right-of-way on the public lands underlying such highway and improvements, and

''(III) receives a grant of a franchise or other intangible right permitting the taxpayer to receive funds relating to the operation of such highway.''.

(B) CONFORMING AMENDMENT.—Subparagraph (F) of section 168(g)(1) (as redesignated by subsection (a)(1)) is amended by striking ''paragraph (7)'' and inserting ''paragraph (8)''.

(b) AMORTIZATION OF INTANGIBLES.—Section 197(f) of the Internal Revenue Code of 1986 (relating to special rules for amortization of intangibles) is amended by adding at the end the following new paragraph:

''(11) INTANGIBLES RELATING TO APPLICABLE LEASED HIGHWAY PROPERTY.—In the case of any section 197 intangible property which is subject to an applicable lease (as defined in section 168(g)(8)(B)), the amortization period under this section shall not be less than the term of the applicable lease. For purposes of the preceding sentence, rules similar to the rules of section 168(i)(3)(A) shall apply in determining the term of the applicable lease.''.

(c) NO PRIVATE ACTIVITY BOND FINANCING OF APPLICABLE LEASES.—Section 147(e) of the Internal Revenue Code of 1986 is amended by inserting '', or to finance any applicable lease (as defined in section 168(g)(8)(B))'' after ''premises''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after the date of the enactment of this Act.

By Mr. DURBIN (for himself and Mr. GRASSLEY):

S. 887. A bill to amend the Immigration and Nationality Act to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States and for other purposes; to the Committee on the Judiciary.

Mr. DURBIN. 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 printed in the RECORD, as follows:

S. 887

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''H–1B and L–1 Visa Reform Act of 2009''.

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

Sec. 1. Short title.

TITLE I—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subtitle A—H–1B Employer Application Requirements

Sec. 101. Modification of application requirements.
Sec. 102. New application requirements.
Sec. 103. Application review requirements.

Subtitle B—Investigation and Disposition of Complaints Against H–1B Employers

Sec. 111. General modification of procedures for investigation and disposition.
Sec. 112. Investigation, working conditions, and penalties.
Sec. 113. Waiver requirements.
Sec. 114. Initiation of investigations.
Sec. 115. Information sharing.
Sec. 116. Conforming amendment.

Subtitle C—Other Protections

Sec. 121. Posting available positions through the Department of Labor.
Sec. 122. H–1B government authority and requirements.
Sec. 123. Requirements for information for H–1B and L–1 nonimmigrants.
Sec. 124. Additional Department of Labor employees.
Sec. 125. Technical correction.
Sec. 126. Application.

TITLE II—L–1 VISA FRAUD AND ABUSE PROTECTIONS

Sec. 201. Prohibition on outplacement of L–1 nonimmigrants.
Sec. 202. L–1 employer petition requirements for employment at new offices.
Sec. 203. Cooperation with Secretary of State.
Sec. 204. Investigation and disposition of complaints against L–1 employers.
Sec. 205. Wage rate and working conditions for L–1 nonimmigrant.

Sec. 206. Penalties.
Sec. 207. Prohibition on retaliation against L–1 nonimmigrants.
Sec. 208. Reports on L–1 nonimmigrants.
Sec. 209. Technical amendments.
Sec. 210. Application.
Sec. 211. Report on L–1 blanket petition process.

TITLE I—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subtitle A—H–1B Employer Application Requirements

SEC. 101. MODIFICATION OF APPLICATION REQUIREMENTS.

(a) GENERAL APPLICATION REQUIREMENTS.—Subparagraph (A) of section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended to read as follows:

''(A) The employer—

''(i) is offering and will offer to H–1B nonimmigrants, during the period of authorized employment for each H–1B nonimmigrant, wages that are determined based on the best information available at the time the application is filed and which are not less than the highest of—

''(I) the locally determined prevailing wage level for the occupational classification in the area of employment;

''(II) the median average wage for all workers in the occupational classification in the area of employment; and

''(III) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

''(ii) will provide working conditions for such H–1B nonimmigrant that will not adversely affect the working conditions of other workers similarly employed.''.

(b) INTERNET POSTING REQUIREMENT.—Subparagraph (C) of such section 212(n)(1) is amended—

(1) by redesignating clause (ii) as subclause (II);

(2) by striking ''(i) has provided'' and inserting the following:

''(ii)(I) has provided''; and

(3) by inserting before clause (ii), as redesignated by paragraph (2) of this subsection, the following:

''(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

''(I) the wages and other terms and conditions of employment;

''(II) the minimum education, training, experience, and other requirements for the position; and

''(III) the process for applying for the position; and''.

(c) WAGE DETERMINATION INFORMATION.—Subparagraph (D) of such section 212(n)(1) is amended by inserting ''the wage determination methodology used under subparagraph (A)(i),'' after ''shall contain''.

(d) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—

(1) NONDISPLACEMENT.—Subparagraph (E) of such section 212(n)(1) is amended—

(A) in clause (i)—

(i) by striking ''90 days'' both places it appears and inserting ''180 days''; and

(ii) by striking ''(i) In the case of an application described in clause (ii), the'' and inserting ''The''; and

(B) by striking clause (ii).

(2) RECRUITMENT.—Subparagraph (G)(i) of such section 212(n)(1) is amended by striking ''In the case of an application described in subparagraph (E)(ii), subject'' and inserting ''Subject''.

(e) REQUIREMENT FOR WAIVER.—Subparagraph (F) of such section 212(n)(1) is amended to read as follows:

''(F) The employer shall not place, outsource, lease, or otherwise contract for the services or placement of H–1B nonimmigrants with another employer unless the employer of the alien has been granted a waiver under paragraph (2)(E).''.

SEC. 102. NEW APPLICATION REQUIREMENTS.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after clause (ii) of subparagraph (G) the following:

''(H)(i) The employer has not advertised any available position specified in the application in an advertisement that states or indicates that—

''(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

''(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

''(ii) The employer has not solely recruited individuals who are or who will be H–1B nonimmigrants to fill such position.

''(I) If the employer employs 50 or more employees in the United States, the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) may not exceed 50 percent of the total number of employees.

''(J) If the employer, in such previous period as the Secretary shall specify, employed 1 or more H–1B nonimmigrants, the employer shall submit to the Secretary the Internal Revenue Service Form W-2 Wage and Tax Statement filed by the employer with respect to the H–1B nonimmigrants for such period.''.

SEC. 103. APPLICATION REVIEW REQUIREMENTS.

(a) TECHNICAL AMENDMENT.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by section 102, is further amended in the undesignated paragraph at the end, by striking ''The employer'' and inserting the following:

''(K) The employer.''.

(b) APPLICATION REVIEW REQUIREMENTS.—Subparagraph (K) of such section 212(n)(1), as designated by subsection (a), is amended—

(1) by inserting ''and through the Department of Labor's website, without charge.'' after ''D.C.'';

(2) by striking ''only for completeness'' and inserting ''for completeness and clear indicators of fraud or misrepresentation of material fact,'';

(3) by striking ''or obviously inaccurate'' and inserting '', presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate'';

(4) by striking ''within 7 days of'' and inserting ''not later than 14 days after''; and

(5) by adding at the end the following: ''If the Secretary's review of an application identifies clear indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).''.

Subtitle B—Investigation and Disposition of Complaints Against H–1B Employers

SEC. 111. GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.

Subparagraph (A) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by striking ''(A) Subject'' and inserting ''(A)(i) Subject'';

(2) by striking ''12 months'' and inserting ''24 months'';

(3) by striking the last sentence; and

(4) by adding at the end the following:

''(ii)(I) Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.

''(II) The Secretary may conduct surveys of the degree to which employers comply with the requirements of this subsection and may conduct annual compliance audits of employers that employ H–1B nonimmigrants.

''(III) The Secretary shall—

''(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ H–1B nonimmigrants during the applicable calendar year;

''(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and

''(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.''.

SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

Subparagraph (C) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I)—

(i) by striking ''a condition of paragraph (1)(B), (1)(E), or (1)(F)'' and inserting ''a condition under subparagraph (A), (B), (C)(i), (E), (F), (G)(i)(I), (H), (I), or (J) of paragraph (1)''; and

(ii) by striking ''(1)(C)'' and inserting ''(1)(C)(ii)''; and

(B) in subclause (I)—

(i) by striking ''$1,000'' and inserting ''$2,000''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(D) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits.''; and

(2) in clause (ii)

(A) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''$5,000'' and inserting ''$10,000''; and

(B) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(C) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits.''; and

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking ''90 days'' both places it appears and inserting ''180 days'';

(B) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and''; and

(D) by adding at the end the following:

''(III) an employer that violates subparagraph (A) of such paragraph shall be liable to the employees harmed by such violations for lost wages and benefits.'';

(4) in clause (iv)—

(A) by inserting ''to take, fail to take, or threaten to take or fail to take, a personnel action, or'' before ''to intimidate'';

(B) by inserting ''(I)'' after ''(iv)''; and

(C) by adding at the end the following:

''(II) An employer that violates this clause shall be liable to the employees harmed by such violation for lost wages and benefits.''; and

(5) in clause (vi)—

(A) by amending subclause (I) to read as follows:

''(I) It is a violation of this clause for an employer who has filed an application under this subsection—

''(aa) to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer (the Secretary shall determine whether a required payment is a penalty, and not liquidated damages, pursuant to relevant State law); and

''(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

''(AA) the opportunity to participate in health, life, disability, and other insurance plans;

''(BB) the opportunity to participate in retirement and savings plans; and

''(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).''; and

(B) in subclause (III), by striking ''$1,000'' and inserting ''$2,000''.

SEC. 113. WAIVER REQUIREMENTS.

(a) IN GENERAL.—Subparagraph (E) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

''(E)(i) The Secretary of Labor may waive the prohibition in paragraph (1)(F) if the Secretary determines that the employer seeking the waiver has established that—

''(I) the employer with whom the H–1B nonimmigrant would be placed has not displaced, and does not intend to displace, a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date of the placement of the nonimmigrant with the employer;

''(II) the H–1B nonimmigrant will not be controlled and supervised principally by the employer with whom the H–1B nonimmigrant would be placed; and

''(III) the placement of the H–1B nonimmigrant is not essentially an arrangement to provide labor for hire for the employer with whom the H–1B nonimmigrant will be placed.

''(ii) The Secretary shall grant or deny a waiver under this subparagraph not later than 7 days after the Secretary receives the application for such waiver.''.

(b) REQUIREMENT FOR RULES.—

(1) RULES FOR WAIVERS.—The Secretary of Labor shall promulgate rules, after notice and a period for comment, for an employer to apply for a waiver under subparagraph (E) of section 212(n)(2) of such Act, as amended by subsection (a).

(2) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that rules required by paragraph (1) are published.

SEC. 114. INITIATION OF INVESTIGATIONS.

Subparagraph (G) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i), by striking ''if the Secretary'' and all that follows and inserting ''with regard to the employer's compliance with the requirements of this subsection.'';

(2) in clause (ii), by striking ''and whose identity'' and all that follows through ''failure or failures.'' and inserting ''the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements of this subsection.'';

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as so redesignated, by striking ''meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months'' and inserting ''comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months'';

(7) by amending clause (v), as so redesignated, to read as follows:

''(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.'';

(8) in clause (vi), as so redesignated, by striking ''An investigation'' and all that follows through ''the determination.'' and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.''; and

(9) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (C).''.

SEC. 115. INFORMATION SHARING.

Subparagraph (H) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

''(H) The Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.''.

SEC. 116. CONFORMING AMENDMENT.

Subparagraph (F) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by striking ''The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer.''.

Subtitle C—Other Protections

SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE DEPARTMENT OF LABOR.

(a) DEPARTMENT OF LABOR WEBSITE.—Paragraph (3) of section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended to read as follows:

''(3)(A) Not later than 90 days after the date of the enactment of the H–1B and L–1 Visa Reform Act of 2009, the Secretary of Labor shall establish a searchable Internet website for posting positions as required by paragraph (1)(C). Such website shall be available to the public without charge.

''(B) The Secretary may work with private companies or nonprofit organizations to develop and operate the Internet website described in subparagraph (A).

''(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out the requirements of this paragraph.''.

(b) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that the Internet website required by paragraph (3) of section 212(n) of such Act, as amended by subsection (a), will be operational.

(c) APPLICATION.—The amendments made by subsection (a) shall apply to an application filed on or after the date that is 30 days after the date described in subsection (b).

SEC. 122. H–1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

(a) IMMIGRATION DOCUMENTS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

''(l) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not later than 21 business days after receiving a written request from a former, current, or future employee or beneficiary, an employer shall provide such employee or beneficiary with the original (or a certified copy of the original) of all petitions, notices, and other written communication exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department that is related to an immigrant or nonimmigrant petition filed by the employer for such employee or beneficiary.''.

(b) REPORT ON JOB CLASSIFICATION AND WAGE DETERMINATIONS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the accuracy and effectiveness of the Secretary of Labor's current job classification and wage determination system. The report shall—

(1) specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and

(2) make recommendations concerning necessary updates and modifications.

SEC. 123. REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

''(s) REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.—

''(1) IN GENERAL.—Upon issuing a visa to an applicant for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15) who is outside the United States, the issuing office shall provide the applicant with—

''(A) a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections;

''(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights; and

''(C) a copy of the application submitted for the nonimmigrant under section 212(n) or the petition submitted for the nonimmigrant under subsection (c)(2)(A), as appropriate.

''(2) Upon the issuance of a visa to an applicant referred to in paragraph (1) who is inside the United States, the issuing officer of the Department of Homeland Security shall provide the applicant with the material described in clauses (i), (ii), and (iii) of subparagraph (A).''.

SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOYEES.

(a) IN GENERAL.—The Secretary of Labor is authorized to hire 200 additional employees to administer, oversee, investigate, and enforce programs involving nonimmigrant employees described in section 101(a)(15)(H)(i)(B).

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

SEC. 125. TECHNICAL CORRECTION.

Section 212 of the Immigration and Nationality Act is amended by redesignating the second subsection (t), as added by section 1(b)(2)(B) of the Act entitled ''An Act to amend and extend the Irish Peace Process Cultural and Training Program Act of 1998'' (Public Law 108–449 (118 Stat. 3470)), as subsection (u).

SEC. 126. APPLICATION.

Except as specifically otherwise provided, the amendments made by this title shall apply to applications filed on or after the date of the enactment of this Act.

TITLE II—L–1 VISA FRAUD AND ABUSE PROTECTIONS

SEC. 201. PROHIBITION ON OUTPLACEMENT OF L–1 NONIMMIGRANTS.

(a) IN GENERAL.—Subparagraph (F) of section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended to read as follows:

''(F)(i) Unless an employer receives a waiver under clause (ii), an employer may not employ an alien, for a cumulative period of more than 1 year, who—

''(I) will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L); and

''(II) will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent, including pursuant to an outsourcing, leasing, or other contracting agreement.''

''(ii) The Secretary of Homeland Security may grant a waiver of the requirements of clause (i) for an employer if the Secretary determines that the employer has established that—

''(I) the employer with whom the alien referred to in clause (i) would be placed has not displaced and does not intend to displace a United States worker employed by the employer within the period beginning 180 days after the date of the placement of such alien with the employer;

''(II) such alien will not be controlled and supervised principally by the employer with whom the nonimmigrant would be placed; and

''(III) the placement of the nonimmigrant is not essentially an arrangement to provide labor for hire for an unaffiliated employer with whom the nonimmigrant will be placed, rather than a placement in connection with the provision or a product or service for which specialized knowledge specific to the petitioning employer is necessary.

''(iii) The Secretary shall grant or deny a waiver under clause (ii) not later than 7 days after the date that the Secretary receives the application for the waiver.''.

(b) REGULATIONS.—The Secretary of Homeland Security shall promulgate rules, after notice and a period for comment, for an employer to apply for a waiver under subparagraph (F)(ii) of section 214(c)(2), as added by subsection (a).

SEC. 202. L–1 EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

''(G)(i) If the beneficiary of a petition under this paragraph is coming to the United States to open, or be employed in, a new office, the petition may be approved for up to 12 months only if—

''(I) the alien has not been the beneficiary of 2 or more petitions under this subparagraph during the immediately preceding 2 years; and

''(II) the employer operating the new office has—

''(aa) an adequate business plan;

''(bb) sufficient physical premises to carry out the proposed business activities; and

''(cc) the financial ability to commence doing business immediately upon the approval of the petition.

''(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

''(I) evidence that the importing employer meets the requirements of this subsection;

''(II) evidence that the beneficiary of the petition is eligible for nonimmigrant status under section 101(a)(15)(L);

''(III) a statement summarizing the original petition;

''(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i)(I);

''(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

''(VI) evidence that the importing employer, for the entire period beginning on the date on which the petition was approved under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

''(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period granted under this clause;

''(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

''(IX) evidence of wages paid to employees;

''(X) evidence of the financial status of the new office; and

''(XI) any other evidence or data prescribed by the Secretary.

''(iii) A new office employing the beneficiary of an L–1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the petition is sought.

''(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary's discretion, may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary's discretion.''.

SEC. 203. COOPERATION WITH SECRETARY OF STATE.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, is further amended by adding at the end the following:

''(H) For purposes of approving petitions under this paragraph, the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify the existence or continued existence of a company or office in the United States or in a foreign country.''.

SEC. 204. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L–1 EMPLOYERS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 202 and 203, is further amended by adding at the end the following:

''(I)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

''(ii) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

''(iii) The Secretary shall establish a procedure for any person desiring to provide to the Secretary information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

''(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

''(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

''(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide the interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

''(vii) If the Secretary, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (L).

''(viii)(I) The Secretary may conduct surveys of the degree to which employers comply with the requirements under this section.

''(II) The Secretary shall—

''(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable fiscal year;

''(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in 101(a)(15)(L); and

''(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.''.

SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L–1 NONIMMIGRANT.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, and 204, is further amended by adding at the end the following:

''(J)(i) An employer that employs a nonimmigrant described in section 101(a)(15)(L) for a cumulative period of time in excess of 1 year shall—

''(I) offer such nonimmigrant, during the period of authorized employment, wages, based on the best information available at the time the application is filed, which are not less than the highest of—

''(aa) the locally determined prevailing wage level for the occupational classification in the area of employment;

''(bb) the median average wage for all workers in the occupational classification in the area of employment; and

''(cc) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

''(II) provide working conditions for such nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

''(ii) If an employer, in such previous period specified by the Secretary of Homeland Security, employed 1 or more such nonimmigrants, the employer shall provide to the Secretary of Homeland Security the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer with respect to such nonimmigrants for such period.

''(iii) It is a failure to meet a condition under this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) to require such a nonimmigrant to pay a penalty for ceasing employment with the employer before a date mutually agreed to by the nonimmigrant and the employer; or

''(II) to fail to offer to such a nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

''(aa) the opportunity to participate in health, life, disability, and other insurance plans;

''(bb) the opportunity to participate in retirement and savings plans; and

''(cc) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).

''(iv) The Secretary of Homeland Security shall determine whether a required payment under clause (iii)(I) is a penalty (and not liquidated damages) pursuant to relevant State law.''.

(b) REGULATIONS.—The Secretary of Homeland Security shall promulgate rules, after notice and a period of comment, to implement the requirements of subparagraph (J) of section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as added by subsection (a). In promulgating these rules, the Secretary shall take into consideration any special circumstances relating to intracompany transfers.

SEC. 206. PENALTIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 202, 203, 204, and 205, is further amended by adding at the end the following:

''(K)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), (J), or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate;

''(II) the Secretary may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants; and

''(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.

''(ii) If the Secretary finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), (J). or (L) or a willful misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

''(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate;

''(II) the Secretary may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants; and

''(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.''.

SEC. 207. PROHIBITION ON RETALIATION AGAINST L–1 NONIMMIGRANTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, 204, 205, and 206, is further amended by adding at the end the following:

''(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee—

''(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

''(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

''(ii) In this subparagraph, the term 'employee' includes—

''(I) a current employee;

''(II) a former employee; and

''(III) an applicant for employment.''.

SEC. 208. REPORTS ON L–1 NONIMMIGRANTS.

Section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(8)) is amended by inserting ''(L),'' after ''(H),''.

SEC. 209. TECHNICAL AMENDMENTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

SEC. 210. APPLICATION.

The amendments made by sections 201 through 207 shall apply to applications filed on or after the date of the enactment of this Act.

SEC. 211. REPORT ON L–1 BLANKET PETITION PROCESS.

(a) REQUIREMENT FOR REPORT.—Not later than 6 months after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit to the appropriate committees of Congress a report regarding the use of blanket petitions under section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the efficiency and reliability of the process for reviewing such blanket petitions, including whether the process includes adequate safeguards against fraud and abuse.

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

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

(2) the Committee on the Judiciary of the Senate;

(3) the Committee on Homeland Security of the House of Representatives; and

(4) the Committee on the Judiciary of the House of Representatives.

By Mr. SPECTER (for himself and Mr. CASEY):

S. 889. A bill to amend the Agricultural Adjustment Act to require the Secretary of Agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as Class II milk, by using the national average cost of production, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SPECTER. Mr. President, I seek recognition to speak on legislation I am introducing with Senator CASEY that will require the Secretary of Agriculture to determine the price of all manufactured milk, classified as Class II milk, using the national average cost of production. At a time when the dairy farmers in Pennsylvania and across the country are seeing record low prices for their milk, this legislation is necessary to bring the price of milk back to a level where farmers can earn a living and provide for their families.

Over the past year, farmers in my state have seen the average price for a hundredweight, cwt, of milk drop from around $24 in July 2008, to hovering around $10 this February. This dramatic price decrease has been the result of a perfect storm of factors, including record high fuel prices last summer, which increased the cost of feed and other supplies, and a decrease in demand for dairy products abroad, where cases of melamine in milk have caused a severe drop in demand.

Last year, Sen. CASEY and I worked diligently to increase the Milk Income Loss Contract, MILC, Program in the 2008 Farm Bill. We were successful in

including a cost of production increase to all MILC payments. These direct payments from the federal government are triggered when the price of milk per cwt falls below $16.94. When the average price of milk for a given month falls below this trigger, farmers are paid 45 percent of the difference between the actual price of milk and the trigger price. With the 2008 Farm bill's inclusion of the cost of production to these payments, farmers are seeing higher MILC payments than they otherwise would.

However, this is not enough. I have heard numerous reports from my constituents that the price of milk has fallen so low that they are fearful of having to sell their farms in order to provide for their families. Many of the dairy farms in Pennsylvania are small, family-owned farms, which, once sold, will be lost forever. We cannot let this happen. The dairy industry is critical not only to Pennsylvania's economy, but to the economy of the U.S. and to the security of our nation.

The Federal Milk Marketing Improvement Act will not only use a national average cost of production to determine Class II milk, but will also keep the Secretary of Agriculture engaged in protecting farmers from falling milk prices. This legislation would require the Secretary to adjust the value of milk four times a year, ensuring that price volatilities in the fuel sector will not unfairly hurt this industry, as we have seen it do in the past year.

Finally, this legislation provides an exemption for new dairy producers, up to 3 million pounds of milk during the first year of production, to encourage growth in the industry. With recent losses across the country of so many dairy farms, this provision is important to spurring new farmers and producers to enter the dairy industry.

I look forward to working with my colleagues to advance this and other legislation which will help a vital industry to this country. Our dairy farmers are the backbone of the agricultural community, and they deserve our support.

By Mr. REID (for Mr. ROCKEFELLER):

S. 890. A bill to provide for the use of improved health information technology with respect to certain safety net health care providers; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Health Information Technology Public Utility Act, legislation I have recently introduced to facilitate nationwide adoption of electronic health records, EHRs, particularly among small, rural providers. This legislation will build on the successful open source models for EHRs developed by the Department of Veterans Affairs and the Indian Health Service—as well as the open source exchange model recently expanded among federal agencies through the Nationwide Health Information Network-Connect initiative.

Health information technology, IT, that is interoperable and meaningful is a necessary tool to improve the quality of health care Americans receive and make our health care system more efficient. It is the cornerstone of health care communication and coordination between patients and providers and among providers in order delivery high-quality medical care. Several of the mechanisms embedded in this technology—clinical decisions support, interoperability—achieve the long-term policy goals we are considering as part of our broader health reform discussions. It is clear that coordination and communication among providers, improved efficiencies in resource use, streamlined administration and billing, and increased access to meaningful data about quality improvement and improved health outcomes will not be possible without meaningful use of this technology among all providers.

However, access to affordable technology is the primary reason why providers across the nation do not invest in this valuable tool. The licensing fees of proprietary software are expensive and beyond the reach of many of health care providers—particularly small, rural providers. Moreover, the federal government has spent substantial taxpayer dollars in the development of open source technology—with the Department of Veterans Affairs and the Indian Health Service, IHS, national leaders in open source electronic health record, EHR, development and implementation. Both the Veterans Health Administration's VistA software and the Indian Health Services' Resource and Patient Management System, RPMS, are affordable and dependable systems that have been in place for decades.

Most recently, the health IT funding included in the American Recovery and Reinvestment Act, ARRA, although substantial, is likely to fall short of offering affordable options to all providers. In fact, CBO estimates that, even with funding and incentives in the ARRA, 30 percent of hospitals and 10 percent of physicians will not have adopted health IT by 2019. And, there are some providers that are ineligible for funding under ARRA altogether.

The Health Information Technology Public Utility Act will address this problem by increasing access to open source software through a public utility model. The public utility model proposed in this bill would be administered by a Federal Consolidated Health Information Technology Board under the umbrella of the ONCHIT, separate from the Policy and Standards Committees. Members of this Board would represent relevant agencies across the federal government. The Board would be responsible for linking efforts of current and new VistA and RPMS user groups, and updating VistA and RPMS open source software (including provider-based EHRs, personal health records, and other software modules) on a timely basis.

The legislation also establishes a new 21st Century Health Information Technology Grant Program to provide funding to public and not-for-profit safety net providers to cover the costs of implementation and initial maintenance of VistA and/or RPMS systems. Grants will focus on eligible hospitals and clinics, with some additional funding for demonstrations in long-term care, home health, and hospice.

The Health Information Technology Public Utility Act fills a crucial gap in health IT affordability and accessibility. This legislation does not replace commercial software; instead, it complements the private industry in this field—by making health information technology a realistic option for all providers and by making it possible for the benefits of health IT to accrue to all patients and I urge my colleagues to join me in support of this important policy.

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 printed in the RECORD, as follows:

S. 890

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 ''Health Information Technology (IT) Public Utility Act of 2009''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BOARD.—The term ''Board'' means the Federal Consolidated Health Information Technology Board established under section 3.

(2) RPMS.—The term ''RPMS'' means the Resource and Patient Management System of the Indian Health Service.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Veterans Affairs.

(4) VISTA.—The term ''VistA'' means the VistA software program utilized by the Department of Veterans Affairs.

SEC. 3. FEDERAL CONSOLIDATED HEALTH INFORMATION TECHNOLOGY BOARD.

(a) ESTABLISHMENT.—To facilitate the implementation of electronic health record systems among safety-net health care providers (particularly small, rural providers) there shall be established within the Office of the National Coordinator for Health Information Technology of the Department of Health and Human Services, a Federal Consolidated Health Information Technology Board.

(b) BOARD OF DIRECTORS.—The Board shall be administered by a board of directors that shall be composed of the following individuals or their designees:

(1) The Secretary.

(2) The Under Secretary for Health of the Department of Veterans Affairs.

(3) The Director of the Indian Health Service.

(4) The Secretary of Defense.

(5) The Secretary of Health and Human Services.

(6) The Director of the Agency for Healthcare Research and Quality.

(7) The Administrator of the Health Resources and Services Administration.

(8) The Chairman of the Federal Communications Commission.

(c) DUTIES.—The Board shall—

(1) provide ongoing communication with existing VistA and RPMS user groups to ensure that there is constant interoperability between such groups and to provide for the sharing of innovative ideas and technology;

(2) update VistA and RPMS open source software (including health care provider-based electronic health records, personal health records, and other software modules) on a timely basis;

(3) implement and administer the 21st Century HIT Grant Program under section 4, including providing for notice in the Federal Register as well as—

(A) determining specific health information technology grant needs based on health care provider settings;

(B) developing benchmarks for levels of implementation in each year that 21st Century grant funding is provided; and

(C) providing ongoing VistA and RPMS technical assistance to grantees under such program (either through the provision of direct technical support or through the awarding of competitive contracts to other qualified entities);

(D) develop mechanisms to integrate VistA and RPMS with records and billing systems utilized under the Medicaid and State children's health insurance programs under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 and 1397aa et seq.);

(4) establish a child-specific electronic health record, consistent with the parameters to be set for child electronic health records as provided for in the American Recovery and Reinvestment Act of 2009, to be used in the Medicaid and State children's health insurance programs under titles XIX and XXI of the Social Security Act, and under other Federal children's health programs determined appropriate by the board of directors;

(5) develop and integrate quality and performance measurement into the VistA and RPMS modules;

(6) integrate the 21st Century HIT Grant Program under section 4 with the Federal Communications Commission's Rural Health Care Pilot Program, with Department of Veterans Affairs hospital systems, and with other Federal health information technology health initiatives; and

(7) carry out other activities determined appropriate by the board of directors.

(d) ANNUAL AUDITS.—The Comptroller General of the United States shall annually conduct an audit of the activities of the Board during the year and submit the results of such audits to the appropriate committees of Congress.

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

SEC. 4. 21ST CENTURY HEALTH INFORMATION TECHNOLOGY (HIT) GRANTS.

(a) ESTABLISHMENT.—The Board shall establish a grant program, to be known as the 21st Century Health Information Technology (HIT) Grant program, to award competitive grants to eligible safety-net health care providers to enable such providers to fully implement VistA or RPMS with respect to the patients served by such providers.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a grant under subsection (a), an entity shall—

(A) be—

(i) a public or nonprofit health care provider (as defined in section 254(h)(7)(B) of the Communications Act of 1934 (47 U.S.C. 254(h)(7)(B)), including—

(I) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(II) a community health center receiving a grant under section 330 of the Public Health Service Act (42 U.S.C. 254) or a health center that provides health care to migrants;

(III) a local health department or agency, including a dedicated emergency department of rural for-profit hospitals;

(IV) a community mental health center;

(V) a nonprofit hospitals;

(VI) a rural health clinics, including a mobile clinic;

(VII) a consortia of health care providers, that consists of 1 or more of the entities described in clauses (i) through (vi); and

(VIII) a part-time eligible entity that is located in an otherwise ineligible facility (as described in section 5(b); or

(ii) a free clinic (as defined in paragraph (4); and

(B) submit to the Board as application at such time, in such manner, and containing such information as the Board may require.

(2) NON-ELIGIBLE ENTITIES.—

(A) IN GENERAL.—An entity shall not be eligible to receive a grant under this section if such entity is a for-profit health care entity (except as provided for in paragraph (1)(A)), or any other type of entity that is not described in such paragraph, including—

(i) an entity described in paragraph (1)(A) that is implementing an existing electronic health records system;

(ii) an entity that is receiving grant funding under the Federal Communication Commission Rural Health Pilot Program;

(iii) an entity receiving funding for health information technology through a Medicaid transformation grant under title XIX of the Social Security Act (42 U.S.C. 1936 et seq.);

(iv) a private physician office or clinic;

(v) a nursing home or other long-term care facility (such as an assisted living facility);

(vi) an emergency medical service facility;

(vii) a residential substance abuse treatment facility;

(viii) a hospice;

(ix) a for-profit hospital;

(x) a home health agency;

(xi) a blood bank;

(xii) a social service agency; and

(xiii) a community center, vocational rehabilitation center, or youth center.

(B) OTHER ENTITIES.—An entity shall not be eligible to receive a grant under this section if such entity is receiving Medicare or Medicaid incentive funding under any of the amendments made by title IV of division B of the American Recovery and Reinvestment Act of 2009.

(3) PREFERENCE.—In awarding grant under this section the Board shall give preference to applicants that—

(A) are located in geographical areas that have a greater likelihood of serving the same patients and utilizing interoperability to promote coordinated care management; or

(B) demonstrate the greatest need for such award (as determined by the Secretary).

(4) DEFINITION.—In this subsection, the term ''free clinic'' means a safety-net health care organization that—

(A) utilizes volunteers to provide a range of medical, dental, pharmacy, or behavioral health services to economically disadvantaged individuals the majority of whom are uninsured or underinsured; and

(B) is a community-based tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, or that operates as a program component or affiliate of such a 501(c)(3) organization.

An entity that is otherwise a free clinic under this paragraph, but that charge a nominal fee to patients, shall still be considered to be a free clinics if the entity delivers essential services regardless of the patient's ability to pay.

(c) USE OF FUNDS.—An entity shall use amounts received under a grant under this section to fully implement the VistA or RPMS with respect to the patients served by such entity. Such implementation shall include at least the meaningful use (as defined by the Secretary of Health and Human Services) of such systems, including any ongoing updates and changes to such definition.

(d) TERM AND RENEWAL.—A grant under this section shall be for a period of not to exceed 5 years and may be renewed, as determined appropriate by the Board, based on the achievement of benchmarks required by the Board.

(e) ANNUAL REPORTING.—

(1) BY GRANTEES.—Not later than 1 year after the date on which an entity receives a grant under this section, and annually during each year in which such entity has received funds under such grant, such entity shall submit to the Board a report concerning the activities carried out under the grant.

(2) BY BOARD.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Board shall submit to the appropriate committees of Congress a report concerning the activities carried out under this section, including—

(A) a description of the grants that have been awarded under this section and the purposes of such grants;

(B) specific implementation information with respect to activities carried out by grantees;

(C) the costs and savings achieved under the program under this section;

(D) a description of any innovations developed by health care providers as a result of the implementation of activities under this grant;

(E) a description of the results of grant activities on patient care quality measurement (including reductions in medication errors and the provision of care management);

(F) a description of the extent of electronic health record use across health care provider settings;

(G) a description of the extent to which integration of VistA and RPMS with Medicaid and State children's health insurance program billing has been achieved; and

(H) any other information determined necessary by the Board.

(f) ANNUAL AUDITS.—The Comptroller General of the United States shall annually conduct an audit of the grant program carried out under this section and submit the results of such audits to the Board and the appropriate committees of Congress.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $2,000,000,000 for each of fiscal years 2010 and 2011; and

(2) $1,000,000,000 for each of fiscal years 2012 through 2014.

SEC. 5. 21ST CENTURY HEALTH INFORMATION TECHNOLOGY DEMONSTRATION PROGRAM FOR INELIGIBLE ENTITIES.

(a) IN GENERAL.—The Board may use not to exceed 10 percent of the amount appropriate for each fiscal year under section 4(g) to award competitive grants to eligible long-term care providers for the conduct of demonstration projects to implement VistA or RPMS with respect to the individuals served by such providers.

(b) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a grant under subsection (a), an entity shall—

(A) be a—

(i) nursing home or other long-term care facility (such as an assisted living facility);

(ii) a hospice; or

(iii) a home health agency; and

(B) submit to the Board as application at such time, in such manner, and containing such information as the Board may require, including a description of the manner in which the applicant will use grant funds to implement VistA or RPMS with respect to the individuals served by such applicant to achieve one or more of the following:

(i) Improve care coordination and chronic disease management.

(ii) Reduce hospitalizations.

(iii) Reduce patient churning between the hospital, nursing home, hospice, and home health entity.

(iv) Increase the ability of long-term care patients to remain in their homes and communities.

(v) Improve patient completion, and provider execution, of advance directives.

(2) NONELIGIBILITY.—An entity shall not be eligible to receive a grant under this section if such entity is receiving Medicare or Medicaid incentive funding under any of the amendments made by title IV of division B of the American Recovery and Reinvestment Act of 2009.

(c) USE OF FUNDS.—An entity shall use amounts received under a grant under this section to implement the VistA or RPMS with respect to the individuals served by such entity. Such implementation shall include at least the meaningful use (as defined by the Secretary of Health and Human Services) of such systems, including any ongoing updates and changes to such definition.

(d) DURATION.—A grant under this section shall be for a period of not to exceed 3 years, as determined appropriate by the Board.

(e) REPORTING.—The Board, as part of the report submitted under section 4(e)(2), shall provide comprehensive information on the activities conducted under grants awarded under this section.

By Mr. BROWNBACK (for himself, Mr. DURBIN, and Mr. FEINGOLD):

S. 891. A bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. BROWNBACK. Mr. President, I rise before you today to speak on an issue that I have brought to the Senate Floor before and have been watching for quite some time now. I would like to submit for the record the Congo Conflict Minerals Act of 2009.

This bill will require U.S.-registered companies selling products using columbite-tantalite, coltan, cassiterite, or wolframite, or derivatives of these minerals, to annually disclose to the Securities and Exchange Commission the country of origin of those minerals. If the country of origin is the Democratic Republic of Congo or neighboring countries, the company would need to disclose the mine of origin.

These minerals are the ''conflict diamonds'' of Congo, however rather than ending up in jewelry these minerals are ending up in our electronics products.

This is not the first time this issue has been raised. Only last year Senator DURBIN and I introduced S3058, the Conflict Coltan and Cassiterite Act, which prohibited the importation of certain products that contained or are derived from columbite-tantalite or cassiterite mined or extracted in the Democratic Republic of the Congo. While the bill did not go anywhere, the issue itself has gained attention. We have taken a strong hard look at last year's bill and have done our best to improve on it.

In the current legislation we call for transparency and accountability throughout the supply-chain of these minerals. By making this supply-chain more translucent, we ultimately can help save millions of innocent Congolese lives who find themselves caught in the middle of this conflict, a conflict based on the control of these minerals. Some in industry have already started down this road and are even in front of the curve with their efforts, but we still need to strive to do a better job of showing transparency and we need to do it quickly.

It is no secret that the exploitation of minerals is taking place and funding the conflict in Congo. In its final report, released on December 12, 2008, the United Nations Group of Experts on the Democratic Republic of the Congo found that official exports of columbite-tantalite, cassiterite, wolframite, and gold are grossly undervalued and that various illegal armed groups in the eastern region of the Democratic Republic of Congo continue to profit greatly from these natural resources by coercively exercising control over mining sites from where they are extracted and locations along which they are transported for export.

I have said this before and I will say it again, this murky, conflict-funding supply-chain of minerals in eastern Congo has been the heart of darkness for that country too long and I am not the only one who believes that.

Last month the Democratic Republic of Congo's U.N. Ambassador Faida Mitifu spoke in New York during a panel discussion on media coverage of sexual violence against Congolese women. When the issue of minerals in eastern Congo was raised, Ambassador Mitifu said the exploitation of mineral resources is the driving force behind the conflict.

Her exact quote ''the minerals have truly been the driving force behind this war. It has been dressed with different clothes, but truly the minerals are the driving force.'' She went onto say the history of exploitation and conflict dates back to the Congo's colonial history with Belgium.

She is right. The mismanagement of natural resources has long cast a gloom over the Democratic Republic of Congo. The exploitation of these natural resources that began during the reign of King Leopold has endured for over 100 years. During this 24-year tyranny of Congo, King Leopold exploited the local population by turning it into a slave colony, extracting the resource of the day—rubber, while over 13 million Congolese died.

In his book the ''Heart of Darkness'' Joseph Conrad describes King Leopold's colonial project in the Congo ''the vilest scramble for loot that ever disfigured the history of human conscience.'' But have we seen history change at all? Well let me share with you some of the lives ravaged by this ongoing conflict.

This small 3½-year-old boy became one of the millions of victims of displacement and malnourishment. His family fled into the jungle from a rebel group that had burnt their village to the ground in just outside the village of Kitchanga in North Kivu.

They lived in the jungle and had been constantly on the move. Food became scarce and meals became as sporadic as 2 to 3 a week. He fell sick and developed a cough. When his mother brought him to the local health clinic, they were immediately referred to an international humanitarian organization in the area. There, this young boy was diagnosed with malaria, tuberculosis, and anemia.

His doctors then discovered he had been eating only what his mother could gather in jungle and ate only once every three to four days. They immediately began his treatments, which his small, frail body was struggling to accept.

While this small 2–year-old boy had a similar story, however more disheartening. His family had fled into the jungle when the rebels attacked their village. After 3 months of seeking shelter in the jungle, his mother finally brought him to a local health clinic where he too was referred to the international humanitarian organization there. The only diagnosis the doctors could come up with was malaria. However when this photo was taken his body was rejecting the treatments, he no longer cried-out in hunger or pain, he no longer responded to anything.

The issue of rape in the Congo is quite possibly the worst in the world. We used to call it a ''tool of war'' but now it's not even due to the war. Because it has been taking place there for so long, it has nearly become an accepted behavior and one where impunity reigns free.

Last year I spoke with Dr. Mukwege from Panzi Hospital in the city of Bukavu in the South Kivu Province of Congo. Panzi Hospital is the leading treatment hospital of rape and sexual violence survivors in Congo. Dr. Mukwege sat in my office and told me of how he was seeing as many as 10 new rape survivors who needed treatment a week.

He then pulled out a map and circled the areas where majority of his patients were coming from and explained that those areas were the key mining areas for coltan and cassiterite in South Kivu. He said that rebels controlled these areas because of the mineral wealth and that with their control of these areas came their lawlessness and with lawlessness came the impunity of rape.

Rape, displacement, insecurity, forced labor, child soldiers, curable illnesses left untreated, and deaths of 1,500 people a day are only a few of the human indignities directly and indirectly surrounding this struggle for control of the minerals in eastern Congo. However there is no room for turning a blind eye on this matter when we all must be actors in this supply-chain—from miner to consumer.

American greatness has always been founded on our fundamental goodness. We need to be a nation where the strong protect the weak and people of privilege assist those in poverty. It says a lot about the kind of America we all should work for when we speak out against this type of tragedy and commit ourselves to those who are suffering there.

Mr. FEINGOLD. Mr. President, today I am pleased to join Senators BROWNBACK and DURBIN as an original cosponsor of the Congo Conflict Minerals Act of 2009. The purpose of this bill is to bring greater attention and transparency to the way in which the trade in three minerals—columbite-tantalite, cassiterite, or wolframite—is intertwined with the ongoing violence, displacement and human rights abuses in the eastern Democratic Republic of Congo. The metals derived from these three minerals are used widely in the electronic products that we use daily, from cell phones to laptops to digital cameras. By working to ensure the raw materials used in those products are not benefiting armed groups, we can have a positive impact on ending armed conflict and human rights abuses in the Congo.

Specifically, this bill charges the State Department to support the work of the United Nations Group of Experts to further investigate and provide companies with guidance on the links between natural resources and the financing of armed groups. It also charges the State Department with developing a strategy to help break these linkages, while helping governments in the region to establish the necessary frameworks and institutions to monitor and regulate the cross-border trade of these minerals. Then, this bill requires U.S.-registered companies selling products containing those three minerals to disclose the country of origin of those minerals and, if they come from Congo or neighboring countries, to give further information, including the mine of origin. This requirement will compel companies to take responsibility for their suppliers and thus bring greater transparency to the trade in these minerals, which may enable more targeted actions down the road. Finally, this bill encourages USAID to expand programs seeking to improve the conditions and livelihood prospects for communities affected by this violence in Congo. We must not forget that the long-term goal is not to shut this trade down, but to support a conflict-free mining economy that benefits the Congolese people.

The United Nations Group of Experts has reported over the years that various illegal armed groups in eastern Congo profit greatly from the region's vast natural resources. In February 2008, the Group of Experts stated, ''individuals and entities buying mineral output from areas of the eastern part of the Democratic Republic of Congo with a strong rebel presence are violating the sanctions regime when they do not exercise due diligence to ensure their mineral purchases do not provide assistance to illegal armed groups.'' They defined due diligence as determining the precise identify of the deposits from which the minerals have been mined, establishing whether or not these deposits are controlled and/or taxed by illegal armed groups, and refusing to buy minerals known to originate—or suspected to originate—from deposits controlled/taxed by these armed groups. In December 2008, the United Nations Security Council unanimously adopted Resolution 1857, broadening existing sanctions relating to Congo to include individuals or entities supporting the illegal armed groups through the illicit trade of natural resources. The resolution also encouraged member countries to ensure that companies handling minerals from Congo exercise due diligence with their suppliers.

The U.S. has invested financial resources and diplomacy over recent years in trying to bring peace and stability to eastern Congo, and there have been some successes. However, our efforts have ultimately been hindered by a failure to directly address the underlying causes of conflict. A study by the Government Accountability Office released in 2007 found that U.S. efforts in Congo are undermined by weak governance and mismanagement of natural resources. The plunder and unregulated trade of eastern Congo's rich mineral base continues to make war a profitable enterprise. This legislation attempts to finally confront and address that problem. It commits the United States government and those companies under our jurisdiction to shed light on the dynamics of eastern Congo's mineral economy and to take actions to reduce its exploitation by armed groups. This can be an important step—perhaps even a transitional one—as we work with our regional partners to help them establish and implement better frameworks for regulation and oversight.

Some may say the bill goes too far, while others may argue that this bill does not go far enough; that it has loopholes and lacks sufficient ''teeth.'' This bill is not perfect. However, we must realize the conflict mineral problem is a complex one. This legislation is just a first step to bring greater transparency to that problem, which will then enable more comprehensive, robust and targeted measures down the road. At the same time, we must tread carefully because there are many communities in eastern Congo whose livelihoods are intertwined with the mining economy. All-out prohibitions or blanket sanctions could be counterproductive and negatively affect the very people we seek to help. I am confident that this bill is sensitive to that complex reality. It tasks the Government Accountability Office, within two years, with assessing any problems resulting from the implementation of this Act, determining any adverse impacts on local Congolese communities, and making recommendations for improving its effectiveness. It also urges USAID to expand its programs to work with these communities and improve their livelihood prospects.

I also realize that some others may argue that this bill goes too far; that it imposes impractical or onerous requirements on companies who end-use these minerals. Similar arguments were made in the early days of the Kimberley Process. I appreciate that these three minerals often pass through extensive supply chains and processing stages before the relevant metals are used in technological products. Bringing transparency to those supply chains may not be easy, but it is something we can and should expect of industry when certain commodities are known to be fueling human rights violations. Industry itself has acknowledged this. In February 2009, the Electronic Industry Citizenship Coalition, which includes several major U.S. electronic companies, put out a statement saying that companies can and should uphold responsible practices in their operations and work with suppliers to meet social and environmental standards with respect to the raw materials used in the manufacture of their products. That was a bold statement and I want to work with companies to make it a reality with respect to Congo.

I traveled in 2007 to eastern Congo and saw firsthand the grave suffering of people who have lived through a decade of conflict and humanitarian crisis. The numbers are staggering: an estimated 5.4 million deaths over the last decade—making it the deadliest conflict since the Second World War. In addition, millions of people are still displaced from their homes, living in squalid camps where children are subject to forced recruitment and women suffer unspeakable levels of sexual violence. In my travels to many parts of Africa over the years, the suffering of women and girls in eastern Congo particularly stands out. I met with women and girls there who had been gang raped, often leaving them with horrific physical and psychological damage. I met with women who had lost their husbands, their homes, and their livelihoods and yet against all odds they refused to give up—if only for the sake of their children. I believe this bill will make attaining peace for these women and their families a little easier and that is one of the reasons why I am supporting it.

In 2006, under the leadership of then-Senator Obama and Senator

BROWNBACK, the U.S. Congress passed the Democratic Republic of Congo Relief, Security and Democracy Promotion Act. That bill committed the United States to work comprehensively toward peace, prosperity and good governance in the Congo. The Congo Conflict Minerals Act of 2009 seeks to move us a step closer toward those goals. I urge my colleagues to support it, and thank Senators BROWNBACK and DURBIN for their leadership on this important issue.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 111—RECOGNIZING JUNE 6, 2009, AS THE 70TH ANNIVERSARY OF THE TRAGIC DATE WHEN THE M.S. ST. LOUIS, A SHIP CARRYING JEWISH REFUGEES FROM NAZI GERMANY, RETURNED TO EUROPE AFTER ITS PASSENGERS WERE REFUSED ADMITTANCE TO THE UNITED STATES

Mr. KOHL (for himself and Mr. VOINOVICH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 111

Whereas on May 13, 1939, the ocean liner M.S. St. Louis departed from Hamburg, Germany for Havana, Cuba with 937 passengers, most of whom were Jewish refugees fleeing Nazi persecution;

Whereas the Nazi regime in Germany in the 1930s implemented a program of violent persecution of Jews;

Whereas the Kristallnacht, or Night of Broken Glass, pogrom of November 9 through 10, 1938, signaled an increase in violent anti-Semitism;

Whereas after the Cuban Government, on May 27, 1939, refused entry to all except 28 passengers on board the M.S. St. Louis, the M.S. St. Louis proceeded to the coast of south Florida in hopes that the United States would accept the refugees;

Whereas the United States refused to allow the M.S. St. Louis to dock and thereby provide a haven for the Jewish refugees;

Whereas the Immigration Act of 1924 placed strict limits on immigration;

Whereas a United States Coast Guard cutter patrolled near the M.S. St. Louis to prevent any passengers from jumping to freedom;

Whereas following denial of admittance of the passengers to Cuba, the United States, and Canada, the M.S. St. Louis set sail on June 6, 1939 for return to Antwerp, Belgium with the refugees; and

Whereas 254 former passengers of the M.S. St. Louis died under Nazi rule: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that June 6, 2009, marks the 70th anniversary of the tragic date when the M.S. St. Louis returned to Europe after its passengers were refused admittance to the United States and other countries in the Western Hemisphere;

(2) honors the memory of the 937 refugees aboard the M.S. St. Louis, most of whom were Jews fleeing Nazi oppression, and 254 of whom subsequently died during the Holocaust;

(3) acknowledges the suffering of those refugees caused by the refusal of the United States, Cuban, and Canadian governments to provide them political asylum; and

(4) recognizes the 70th anniversary of the M.S. St. Louis tragedy as an opportunity for public officials and educators to raise awareness about an important historical event, the lessons of which are relevant to current and future generations.

Mr. KOHL. Mr. President, seventy two years ago the M.S. *St. Louis*, a German ocean liner, sailed from Hamburg, Germany to Havana, Cuba with 937 passengers, mostly Jewish refugees searching for the freedom and safety of the American dream. Those passengers left their homes because of state supported anti-semitism including violent pogroms, expulsion from public schools and service, and arrest and imprisonment solely because of Jewish heritage. Some passengers were released from prisons at Buchenwald and Dachau only because they were immigrating out of the country. With their freedom and safety stripped away by Nazi persecution, these refugees sailed for Cuba, a way station to wait for entry visas to the U.S.

When the M.S. *St. Louis* arrived in Cuba, only 28 passengers were allowed to disembark. Corruption and political maneuvering within the Cuban government invalidated the transit visas of the other passengers. Those individuals waited with great hope for a remedy that would provide refuge far from Nazi persecution. Before returning to Europe, the ship sailed towards Miami in hopes of a solution. The ship sailed so close to Florida that the passengers could see the lights of Miami. One survivor remembers his father commenting that ''Florida's golden shores, so near, might as well be 4,000 miles away for all the good it did them.''

The US Immigration and Nationality Act of 1924 strictly limited the number of immigrants admitted to the U.S. each year and in 1939 the waiting list for German-Austrian immigration was several years long. While the press was largely sympathetic to the plight of the passengers of the M.S. *St. Louis*, no extraordinary measures were taken to permit the refugees to enter the United States. The passengers were told that they must ''await their turns on the waiting list and qualify for and obtain immigration visas''.

On June 6 the M.S. *St. Louis* sailed back to Europe with nearly all of its original passengers. Refuge for the passengers was eventually obtained in Great Britain, the Netherlands, Belgium, and France. World War II started three months later and those countries, with the exception of Great Britain, fell to Nazi occupation. Two hundred and fifty-four of those passengers died during the Holocaust and many others suffered under Nazi persecution and in concentration camps.

During this week when we remember the Holocaust, it is appropriate and right to acknowledge the voyage of the M.S. *St. Louis* and the lives and the dreams of those refugees who made a trip towards freedom only to be returned to Europe. This Senate Resolution acknowledges the 70th anniversary of the voyage of the M.S. *St. Louis* and honors the memory of those passengers, 254 of who died during the Holocaust. This resolution also provides an opportunity for public officials and educators to reflect on this historic event and lessons that are relevant to current and future generations.

SENATE RESOLUTION 112—DESIGNATING FEBRUARY 8, 2010, AS ''BOY SCOUTS OF AMERICA DAY'', IN CELEBRATION OF THE 100TH ANNIVERSARY OF THE LARGEST YOUTH SCOUTING ORGANIZATION IN THE UNITED STATES

Mr. NELSON of Nebraska (for himself, Mr. SESSIONS, Mrs. HUTCHISON, Mr. COCHRAN, Mr. BAYH, Mr. CRAPO, Mr. BUNNING, Mr. ENZI, Mr. COBURN, Mr. LUGAR, Mr. CHAMBLISS, Mr. BURR, Mr. BROWN, Mr. CARPER, Mr. ALEXANDER, Mr. INHOFE, Mrs. LINCOLN, Mr. RISCH, Mr. BENNETT, Mr. THUNE, Mr. CASEY, Mr. HATCH, Mr. WARNER, Ms. MURKOWSKI, Mr. BEGICH, Mr. CONRAD, and Mr. JOHANNS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 112

Whereas the Boy Scouts of America was incorporated by the Chicago publisher William Boyce on February 8, 1910, after William Boyce learned of the Scouting movement during a visit to London;

Whereas, on June 21, 1910, a group of 34 national representatives met, developed organization plans, and opened a temporary national headquarters for the Boy Scouts of America in New York;

Whereas the purpose of the Boy Scouts of America is to teach the youth of the United States patriotism, courage, self-reliance, and kindred values;

Whereas, by 1912, Boy Scouts were enrolled in every State;

Whereas, in 1916, Congress granted the Boy Scouts of America a Federal charter;

Whereas each local Boy Scout Council commits each Boy Scout to perform 12 hours of community service yearly, for a total of 30,000,000 community service hours each year;

Whereas, since 1910, more than 111,000,000 people have been members of the Boy Scouts of America;

Whereas Boy Scouts are found in 185 countries around the world;

Whereas the Boy Scouts of America will present the 2 millionth Eagle Scout award in 2009;

Whereas more than 1,000,000 adult volunteer leaders selflessly serve young people in their communities through organizations chartered by the Boy Scouts of America;

Whereas the adult volunteer leaders of the Boy Scouts of America often neither receive nor seek the gratitude of the public; and

Whereas the Boy Scouts of America endeavors to develop United States citizens who are physically, mentally, and emotionally fit, have a high degree of self-reliance demonstrated by such qualities as initiative, courage, and resourcefulness, have personal values based on religious concepts, have the desire and skills to help others, understand the principles of the social, economic, and governmental systems of the United States, take pride in the heritage of the United States and understand the role of the United States in the world, have a keen respect for