United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–36. A petition transmitted by a private citizen relative to the examination of the record and conduct of a judicial nomination; to the Committee on the Judiciary.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of a nomination was submitted:

By Mr. LEVIN for the Committee on Armed Services.

*Leon E. Panetta, of California, to be Secretary of Defense.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BROWN of Ohio:

S. 1188. A bill to require the purchase of domestically made flags of the United States of America for use by the Federal Government; to the Committee on Homeland Security and Governmental Affairs.

By Mr. PORTMAN (for himself, Mr. CORNYN, Mr. CRAPO, Mr. ENZI, Mr. HATCH, Mr. RISCH, and Mr. TOOMEY):

S. 1189. A bill to amend the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) to provide for regulatory impact analyses for certain rules, consideration of the least burdensome regulatory alternative, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. TESTER (for himself, Mr. BLUNT, Mr. WYDEN, Mr. SESSIONS, Mr. CHAMBLISS, and Mr. INOUYE):

S. 1190. A bill to reduce disparities and improve access to effective and cost efficient diagnosis and treatment of prostate cancer through advances in testing, research, and education, including through telehealth, comparative effectiveness research, and identification of best practices in patient education and outreach particularly with respect to underserved racial, ethnic and rural populations and men with a family history of prostate cancer, to establish a directive on what constitutes clinically appropriate prostate cancer imaging, and to create a prostate cancer scientific advisory board for the Office of the Chief Scientist at the Food and Drug Administration to accelerate real-time sharing of the latest research and accelerate movement of new medicines to patients; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LIEBERMAN (for himself and Mr. BLUMENTHAL):

S. 1191. A bill to direct the Secretary of the Interior to carry out a study regarding the suitability and feasibility of establishing the Naugatuck River Valley National Heritage Area in Connecticut, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BEGICH:

S. 1192. A bill to supplement State jurisdiction in Alaska Native villages with Federal and tribal resources to improve the quality of life in rural Alaska while reducing domestic violence against Native women and children and to reduce alcohol and drug abuse and for other purposes; to the Committee on Indian Affairs.

By Mr. CARDIN:

S. 1193. A bill to amend title 23, United States Code, to preserve and renew Federal-aid highways to reduce long-term costs, improve safety, and improve the condition of Federal-aid highways; to the Committee on Environment and Public Works.

By Mr. LEAHY:

S. 1194. A bill to facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes; to the Committee on the Judiciary.

By Mr. MENENDEZ:

S. 1195. A bill to protect victims of crime or serious labor violations from deportation during Department of Homeland Security enforcement actions, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. SESSIONS, Mr. RUBIO, Mr. WICKER, Mr. BOOZMAN, Mr. LEE, Mr. HATCH, Mr. VITTER, Mr. COBURN, and Mr. CORKER):

S. 1196. A bill to expand the use of E-Verify, to hold employers accountable, and for other purposes; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. BARRASSO, Mr. INHOFE, Mr. VITTER, Mr. LUGAR, and Mr. GRASSLEY):

S.J. Res. 19. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROWN of Ohio:

S. 1188. A bill to require the purchase of domestically made flags of the United States of America for use by the Federal Government; to the Committee on Homeland Security and Governmental Affairs.

Mr. BROWN of Ohio. Mr. President, I rise today to introduce the All-American Made Flag Act, on this 234th celebration of Flag Day in our Nation, On June 14, 1777, the Second Continental Congress first adopted a flag for our new country, bestowing a meaning to the stars and stripes of our founding commitment to freedom and democracy.

Our flag inspires servicemembers in times of war; it looks over state capitals and schools, stadiums and veterans halls as a reminder of the price of our peace and security. It stood through the smoke in Pearl Harbor on December 7, 1941, and the rubble in New York City and Washington D.C. on September 11, 2001. The flag instills hope of a better life for generations of immigrants, embodying an aspiration of free people around the world. Americans pledge allegiance to the flag, reminding us about our Nation's history, and the system of checks and balances and separation of powers that tenders the balance of our laws and freedoms.

The flag that inspired our national anthem rests in the Smithsonian's National Museum of American History. Smaller, hand-held flags are waived during Fourth of July Parades and on Memorial Day are placed alongside headstones. But whether in museums or in parades or upon memorials, the American flag reaffirms the power and meaning first ascribed to it by our founders.

And what better way to celebrate its meaning, our Nation's history and virtue, than to ensure it is stamped with the Made-in-America label. On this day, I introduce the All-American Made Flag Act, which would require that American flags purchased by the Federal Government are entirely made in America.

Across the nation, and especially in Ohio, manufacturers and businesses have been making and selling American flags for generations. In Coschocton, Ohio, the nation's oldest and largest producer of American flags has been doing so since 1851. From the first World's Fair in New York City, through the Civil War and World War II, and into the universe and onto the moon these flags, made in Coschocton, have played a role in our nation's history. Today, on Flag Day, it joins other businesses that sell All-American made American flags, from Cincinnati to Dayton to Columbus to Cleveland.

Few things can give better meaning to the Made-in-America label than our own flag. The All-American Made Flag Act would provide that meaning, and in doing so, would invest in America's workers and manufacturers who embody the ingenuity and patriotism embodied in the very flag itself.

By Mr. BEGICH:

S. 1192. A bill to supplement State jurisdiction in Alaska Native villages with Federal and tribal resources to improve the quality of life in rural Alaska while reducing domestic violence against Native women and children and to reduce alcohol and drug abuse and for other purposes; to the Committee on Indian Affairs.

Mr. BEGICH. Mr. President, today I introduce legislation to address issues of great concern to me and to all who care about public safety in Alaska Native villages.

Last year President Obama signed the Tribal Law and Order bill into law. That legislation passed because Congress recognized the great need to provide more support for the criminal justice system and communities in Indian Country. While this law has some important provisions that will benefit Alaska Native communities, I believe the remoteness and other unique conditions in many Native villages in my State compel us to do more. That is why I am introducing the Alaska Safe Families and Villages Act of 2011.

My bill will establish a demonstration project allowing Alaska Native tribes to set up tribal courts, establish tribal ordinances, and impose sanctions on those people who violate the ordinances. It would enhance current tribal

authority, while maintaining the State's primary role and responsibility in criminal matters. Additionally, those communities selected to be part of the demonstration project would be eligible for an Alaska Village Peace Officer grant, enabling a Peace Officer to serve participating communities in a holistic manner.

Due to the vastness of Alaska, too many of our small remote villages lack any law enforcement. Too often, minor cases involving alcohol and domestic abuse go unreported because the nearest State Trooper resides in a distant hub community, located a long and expensive airplane ride away. Frequently, harsh weather prevents the Troopers from flying into a community even when the most heinous acts have occurred. Approximately 71 villages have a sole, unarmed Village Patrol Safety Officer, VPSO, who must be on duty 24 hours a day and 7 days a week. Compounding the challenges of a small number of local law enforcement, these few hard-working VPSOs are often underpaid. While communities try to provide some housing and heating assistance, in places where fuel oil can cost as much as $10 a gallon, it can be difficult to retain qualified VPSOs and also sustain the funding for these public servants.

As one who believes whole-heartedly in community involvement, I strongly believe tribes in Alaska should benefit from true self-determination and have a role in their law enforcement needs. This local control not only provides security for communities, but also encourages local acceptance of the established or existing judicial system as a whole. With the changes in place that my bill would require, residents of Alaska Native villages will see a culturally-relevant system replacing a crisis-management system that is set in place after a tragedy has occurred.

Unfortunately, Alaska Native communities have grown all too familiar with alarming suicide rates. In the Yukon-Kuskokwim Delta, over a two-month period during the summer of 2010, there were at least nine self-inflicted deaths in several of the region's villages. Nick Tucker, an elder in the village of Emmonak, wrote a letter to the State of Alaska's rural affairs advisor to try to bring attention to the issue. Part of Mr. Tucker's letter begged for the Governor to call the Legislature into session to address the issue. He also said it is no longer acceptable for village residents to wait for State Troopers because ''in the villages, they take forever.''

Part of the disturbing cycle of suicide in rural Alaska can be attributed to the presence of drugs and alcohol. Despite the knowledge that an individual can speak with an elder and learn who is bootlegging alcohol or selling drugs, predators do not fear law enforcement intervention because there is no consistent police or State Trooper presence.

Further, despite many Alaska Native communities' wealth of cultural heritage and tradition, many suffer from economic, cultural, and educational depression. Villages often experience high unemployment rates, above 20 percent, due to their remoteness and lack of economic opportunity. Most economic development in Alaska is centered in either the metropolitan areas, or in very remote areas where local residents are able to develop local resources. This economic depression, coupled with the 10,000-year practice of subsistence, means Alaska Natives' physical and spiritual survival remains highly dependent on the land. They subsist on game, berries, and fish. However, as hunting and fishing stocks dwindle, many of these Alaskans are feeling disconnected from their heritage and, at times, have turned to drugs and alcohol. Though educational attainment in the last 40 years has increased dramatically, the dropout rate in Alaska still hovers at 40 percent. Too many of our young men and women have lost hope and are losing a sense of community.

We must give our Nation's communities the tools necessary to protect themselves. Too often, we pour resources into urban areas, but decry lack of resources when we try to work toward innovative solutions for our most remote communities. We should no longer allow the answer from anyone to be ''we don't have the resources.'' Alaska Native villages are vibrant, strong communities and we should do everything in our power to answer their calls for help. I am hoping the Alaska Safe Families and Villages Act of 2011 will be just one piece of the puzzle.

I encourage my colleagues to join me on this legislation, and ask for the full Senate to consider and pass it—providing much-needed help and resources to some of our country's neediest places.

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. 1192

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 ''Alaska Safe Families and Villages Act of 2011''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) while the State of Alaska and numerous Alaska organizations have struggled for years to address crime and substance abuse problems in Alaska, Native Villages continue to suffer from disproportionally high rates of illicit drug use, alcohol abuse, suicide, and domestic violence;

(2) the suicide rate in Alaska Native villages is 6 times the national average, and the alcohol-related mortality rate is 3.5 times that of the general national population;

(3) Alaska Native women suffer the highest rate of forcible sexual assault in the United States, and an Alaska Native woman is sexually assaulted every 18 hours;

(4) according to the 2006 Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission more than 95 percent of all crimes committed in rural Alaska can be attributed to alcohol;

(5) the cost of drug and alcohol abuse in Alaska is estimated at $525,000,000 per year;

(6) the State of Alaska's public safety system does not effectively serve vast areas of the State in which many remote Alaska Native villages are located, except in response to serious crimes involving severe injury or death, which are handled by Alaska State Troopers who are located in only a small number of hub communities around the State;

(7) extreme weather conditions often prevent or delay travel into remote Alaska Native villages, forcing residents to wait for several days for an Alaska State Trooper to arrive and respond to these crimes, compared to a law enforcement response time normally within minutes for residents of urban communities;

(8) in many rural Alaska Native villages, there is no local law enforcement presence whatsoever;

(9) to the extent there are resident law enforcement officers in rural villages, they consist of Village Public Safety Officers (VPSOs) through the State VPSO Program, and a very limited number of other peace officers such as Village Police Officers (VPOs), Tribal Police Officers (TPOs) and Community Peace Officers (CPOs) who tend to have only minimal training and experience;

(10) the VPSO Program is not able to adequately serve all remote Alaska Native villages because there is insufficient funding or officers to address the urgent need for additional law enforcement in these communities;

(11) the number of VPSOs currently serving in Alaska is approximately 71, yet there are about 200 remote villages in Alaska, all of which could benefit from a law enforcement presence;

(12) studies have concluded that the lack of effective law enforcement in Alaska Native villages contributes significantly to increased crime, alcohol abuse, drug abuse, domestic violence, and rates of suicide, poor educational achievement, and a lack of economic development in those communities;

(13) law enforcement that is created and administered by Indian tribes in Alaska will be more responsive to the need for greater local control, local responsibility, and local accountability in the administration of justice; and

(14) it is necessary to invoke the plenary authority of Congress over Indian affairs under section 8 of clause 3 of Article I of the Constitution, in order to improve law enforcement conditions in Alaska Native villages.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish a demonstration project under which a limited number of Indian tribes in Alaska Native villages will exercise local law enforcement responsibilities to combat alcohol and drug abuse and to enhance existing tribal authority over domestic violence and child abuse and neglect;

(2) to enhance coordination and communication among Federal, State, tribal, and local law enforcement agencies; and

(3) to increase funding for, and therefore availability of, local law enforcement.

SEC. 3. DEFINITIONS.

In this Act:

(1) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section

3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(2) PROJECT.—The term ''Project'' means the Alaska Safe Families and Villages Demonstration Project established by section 4(a).

(3) PROJECT AREA.—The term ''Project Area'' means the geographical area within which an Indian tribe proposes to enforce the laws of the Indian tribe developed under the Project, as determined by the tribal government of the applicable Indian tribe and as approved by the Office of Justice Programs upon a showing that the extension of jurisdiction to such area is in the interest of justice.

(4) TRIBAL COURT.—The term ''tribal court'' means any court, council, or other mechanism sanctioned by an Indian tribe for the adjudication of disputes, including the violation of tribal laws, ordinances, or regulations.

(5) TRIBAL ORGANIZATION.—The term ''tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. ALASKA SAFE FAMILIES AND VILLAGES DEMONSTRATION PROJECT.

(a) ESTABLISHMENT OF PROJECT.—The Office of Justice Programs of the Department of Justice shall carry out the Alaska Safe Families and Villages Demonstration Project as provided by this section.

(b) NUMBER OF TRIBES.—The Office of Justice Programs shall select not more than 9 Indian tribes in Alaska to participate in the Project in Alaska over a 3-year period, with not more than 3 Indian tribes selected during each of fiscal years 2012, 2013, and 2014.

(c) DURATION OF PROJECT.—Each Indian tribe selected to participate in the Project shall remain in the Project for a period of 5 years.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—On or before May 1 of each year, the Attorney General shall provide to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a brief annual report detailing activities undertaken under the Project and setting forth an assessment of the Project, together with any recommendations of the Attorney General for further action by Congress.

(2) REQUIREMENTS.—Each report submitted under this subsection shall be prepared—

(A) in consultation with the governments of Indian tribes in Alaska; and

(B) after those governments and the State of Alaska have an opportunity to comment on each report prior to the finalization of the report.

(e) APPLICATIONS.—

(1) CRITERIA.—To qualify to participate in the Project, an Indian tribe in Alaska shall—

(A) request participation by resolution or other official action by the governing body of the Indian tribe;

(B) have for the preceding 3 fiscal years no uncorrected significant and material audit exceptions regarding any Federal contracts or grants;

(C) demonstrate to the Attorney General sufficient governance capacity to conduct the Project, as evidenced by the history of the Indian tribe in operating government services, including public utilities, children's courts, law enforcement, social service programs, or other activities;

(D) demonstrate the ability to sustain the goals and purposes of the Project after funding for the Project has expired; and

(E) meet such other criteria as the Attorney General may promulgate, after providing for public notice.

(2) COPY TO THE ALASKA AG.—Each Indian tribe shall send a copy of its application submitted under this section to the Attorney General of Alaska.

(f) TRIBAL REPORTING.—The Attorney General may by regulation promulgate such minimum reporting requirements as the Attorney General determines are reasonably necessary to carry out this Act.

(g) PUBLIC COMMENT.—All applications submitted pursuant to subsection (e) shall be subject to public comment for a period of not less than 30 days following publication of notice in a newspaper or other publication of general circulation in the vicinity of the Alaska Native village of the Indian tribe requesting participation in the Project.

(h) PLANNING PHASE.—Each Indian tribe selected for participation in the Project shall complete a planning phase that includes—

(1) internal governmental and organizational planning;

(2) the development of written tribal law or ordinances detailing the structure and procedures of the tribal court;

(3) enforcement mechanisms; and

(4) those aspects of drug or alcohol related matters that the Indian tribe proposes to regulate.

(i) CERTIFICATION.—

(1) IN GENERAL.—Upon completion of the planning phase under subsection (h), an Indian tribe shall provide to the Office of Tribal Justice—

(A) the constitution of the Indian tribe (or equivalent organic documents showing the structure of the tribal government and the placement and authority of the tribal court within that structure);

(B) the written tribal laws or ordinances of the Indian tribe governing court procedures and the regulation and enforcement of drugs, alcohol, and related matters;

(C) a map depicting the Project Area of the Indian tribe; and

(D) such other information or materials as the Attorney General may by public notice require.

(2) CERTIFICATION.—The Office of Tribal Justice shall certify the completion of the planning phase under this section.

(3) TIMING.—Certification under paragraph (2) may occur at the time at which an Indian tribe applies for participation in the Project if the Indian tribe demonstrates that the Indian tribe has already met the requirements of the planning phase.

(j) EFFECT OF CERTIFICATION.—

(1) IN GENERAL.—Commencing 30 days after the certification described in subsection (i) and except as provided in paragraph (2), an Indian tribe participating in the Project shall exercise jurisdiction, concurrent with the civil jurisdiction of the State of Alaska under State law, over—

(A) the drug, alcohol, or related matters described in subsection (i) within the Project Area of the Indian tribe; and

(B) persons of Indian or Alaska Native descent or other persons with consensual relationships with the Indian tribe or a member of the Indian tribe.

(2) SANCTIONS.—An Indian tribe participating in the Project shall impose such sanctions as shall be determined by the tribal court to be appropriate, consistent with the Indian Civil Rights Act and tribal law, including such measures as—

(A) restorative justice;

(B) community service;

(C) fines;

(D) forfeitures;

(E) commitments for treatment;

(F) restraining orders; and

(G) emergency detentions.

(3) AGREEMENT REQUIRED.—A person may not be incarcerated by an Indian tribe participating in the Project except pursuant to an agreement entered into under section 7.

(4) TREATMENT OF PROTECTIVE ORDERS.—For purposes of this subsection, the protective order of an Indian tribe participating in the Project excluding any member or nonmember from a community shall be considered a civil remedy.

(5) EMERGENCY CIRCUMSTANCES.—Nothing in this subsection shall prevent an Indian tribe participating in the Project from acting in the following emergency circumstances:

(A) A tribe may assume protective custody of a tribal member or otherwise take action to prevent imminent harm to self or others.

(B) A tribe may take immediate, temporary protective measures to address situations involving an imminent threat of harm to self or others by a non-member.

(k) EFFECT OF ACT.—Nothing in this Act—

(1) limits, alters, or diminishes the civil or criminal jurisdiction of the State of Alaska, or any subdivision of that State, the United States, or any Indian tribe in Alaska, including existing inherent and statutory authority of the tribes over child protection, child custody, and domestic violence;

(2) confirms or denies that any area of Alaska does or does not constitute Indian country;

(3) diminishes the trust responsibility of the United States to Indian tribes in Alaska, or abridges or diminishes the sovereign immunity of any Indian tribe in Alaska;

(4) alters the jurisdiction of the Metlakatla Indian Community within the Annette Islands Reservation;

(5) limits in any manner the eligibility of the State of Alaska, any political subdivision of the State, or any Indian tribe in Alaska, for any other Federal assistance under any other law; or

(6) shall be construed to alter the tribes' existing jurisdictional authority over domestic violence under the Violence Against Women Act.

(l) LIABILITY OF STATE OF ALASKA.—The State of Alaska and any political subdivision of the State shall not be liable for any act or omission of an Indian tribe participating in the Project, including acts or omissions undertaken pursuant to an intergovernmental agreement entered into under section 7.

(m) CONTRACTS.—

(1) IN GENERAL.—Each Indian tribe participating in the Project shall be eligible for a contract from the Office of Justice Programs, in an amount not to exceed $250,000 per year, for use in defraying costs associated with the Project, including costs relating to—

(A) tribal court operations and personnel;

(B) utility and maintenance;

(C) overhead;

(D) equipment; and

(E) continuing education (including travel).

(2) REQUIREMENTS.—The contracts made available under this subsection shall be—

(A) in addition to such grants as may be available under this Act or other provisions of law; and

(B) awarded as contracts in a form authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(3) TRIBAL ORGANIZATIONS.—A tribal organization may enter into contracts on behalf of an Indian tribe participating in the Project upon express written delegation of authority of the Indian tribe to the tribal organization.

(n) REGULATIONS.—The Attorney General may promulgate such regulations as the Attorney General determines to be necessary to carry out this section.

(o) FULL FAITH AND CREDIT.—

(1) IN GENERAL.—Each State shall give full faith and credit to all official acts and decrees of the tribal court of an Indian tribe participating in the Project to the same extent and in the same manner as such State accords full faith and credit to the official acts and decrees of other States.

(2) OTHER LAW.—Nothing in this subsection impairs the duty of a State to give full faith and credit under any other law.

(p) FEDERAL JURISDICTION.—

(1) IN GENERAL.—Subject to paragraph (2), Project Areas and Indian tribes participating in the Project shall be eligible for the same law enforcement programs of the Bureau of Indian Affairs and the Office of Justice Programs, as are applicable to those areas under section 401 of Public Law 90–284 (25 U.S.C. 1321).

(2) APPLICABILITY IN ALASKA.—Nothing in this Act limits the application in Alaska of any provision of title II of Public Law 111-211.

(q) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (m) $2,500,000 for each of fiscal years 2012 through 2018.

SEC. 5. ALASKA VILLAGE PEACE OFFICERS.

(a) ESTABLISHMENT OF ALASKA VILLAGE PEACE OFFICER GRANTS PROGRAM.—The Office of Justice Services of the Department of the Interior shall carry out a contract program for the employment by Indian tribes of Village Peace Officers in Alaska Native villages as provided in this section.

(b) APPLICATION CRITERIA.—

(1) IN GENERAL.—To qualify for a contract under this section, an applicant shall—

(A) be an Indian tribe in Alaska that participated in a Project;

(B) demonstrate the lack of other resident law enforcement in the applicable Alaska Native village; and

(C) satisfy such other criteria as may be established by notice by the Office of Justice Services.

(2) LIMITATION.—Each contract awarded under this section shall be in an amount not to exceed $100,000 for the salary and related costs of employing and equipping 1 Village Peace Officer, except that the Office of Justice Services shall be authorized to waive the 1-officer limitation upon a showing of compelling circumstances.

(c) CONTRACTS.—At the request of an applicant Indian tribe, the Office of Justice Services shall disburse funds awarded under this section through modifications to existing self-determination contracts or self-governance compacts authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), or by contract to a political subdivision of the State of Alaska pursuant to an agreement, if any, under section 7.

(d) ELIGIBILITY FOR BIA TRAINING.—Village peace officers hired pursuant to this section shall be eligible to attend the Bureau of Indian Affairs Police Officer Training Program.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2012 through 2018.

SEC. 6. TECHNICAL ASSISTANCE.

(a) IN GENERAL.—The Attorney General may enter into 18-month contracts with tribal organizations in Alaska to provide training and technical assistance on tribal court development to any Indian tribes in Alaska.

(b) COOPERATION.—Tribal organizations may cooperate with other entities for the provision of services under contracts described in subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,000,000.

SEC. 7. INTERGOVERNMENTAL AGREEMENTS.

(a) IN GENERAL.—The State of Alaska, political subdivisions of that State, Indian tribes in Alaska, and the United States are each authorized and encouraged to enter into intergovernmental agreements, including agreements concerning—

(1) the employment of law enforcement officers, probation, and parole officers;

(2) cross-appointment and cross-deputization of tribal, State, municipal, or Federal officials;

(3) the detention or incarceration of offenders; and

(4) jurisdictional or financial matters.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as restricting the right of the judicial system of Alaska to enter into agreements with the tribal courts.

By Mr. CARDIN:

S. 1193. A bill to amend title 23, United States Code, to preserve and renew Federal-aid highways to reduce long-term costs, improve safety, and improve the condition of Federal-aid highways; to the Committee on Environment and Public Works.

Mr. CARDIN. Mr. President, today I am introducing legislation to help improve and extend the value of our Nation's highways and bridges. This bill will help ensure that the Federal Government makes better investments of the taxpayer dollars spent on transportation infrastructure. Helping build the roads and bridges of this Nation has been one the best Federal investments our government has made and it is an investment that is worth taking care of to ensure the lasting value, efficiency and safety of our Nation's highways and bridges.

It was during the Thomas Jefferson Administration that the Federal Government developed the concept of a ''Federal-Aid'' Highway. In 1806, Congress authorized federal funding to build the ''National Road.'' Much like the National Highway System of today, the purpose of the National Road was to facilitate interstate commerce between the large commercial centers of the Eastern United States to points west. Construction on the National Road began in 1811 in Cumberland, MD, 200 years, and trillions of dollars, later the United States has one of the world's most expansive highway networks.

The age and expanse of this system underscores the importance of ensuring adequate and consistent investments in our existing transportation infrastructure. The need for performance measures and national state-of-good repair standards are long overdue. Implementing such policies are essential ensuring the quality of the road condition, the economic value of our Nation's transportation infrastructure, and the wise investment of taxpayer dollars on transportation infrastructure.

The American Society of Civil Engineers, ASCE, gave our Nation's highways and bridges a grade of ''D−'' in its 2009 ''Report Card for America's Infrastructure.'' These poor road conditions are costing motorists time, money, and in the worst and most unfortunate situations, costing motorists their lives.

A 2011 transportation infrastructure study produced by TRIP, a non-partisan non-profit transportation research organization sponsored by various transportation stakeholder industries, found that 32 percent of America's major roads are in poor or mediocre condition. Poor road conditions take a major toll on the repair and operating costs of motorist's vehicles to the tune of $67 billion a year, or approximately $333 per driver. Poor road conditions contribute to 42 percent of America's urban highways being congested. Traffic congestion costs American motorists more than $78 billion in wasted fuel and lost productivity, and more than 4 billion hours of wasted time that drivers could have otherwise spent with family, earning income or engaged in personal activities. Poor road conditions are a ''significant factor'' in approximately one-third of fatal traffic accidents.

It is Congress's responsibility to ensure that Federal transportation dollars are spent wisely to improve the safety and efficiency of our roads. Making repair and maintenance of our existing infrastructure a priority, during these times of fiscal restraint, is a wise approach to Federal transportation infrastructure. Ignoring maintenance and repair needs on Federal-Aid highways, while advancing capacity expansion projects at the expense of neglected existing infrastructure, exacerbates the decline in the state-of-good repair of our country's roads and bridges and exemplifies irresponsible spending of Federal taxpayer dollars.

ASCE put the cost of the maintenance and repair backlog for roads and bridges at $930 billion. Therefore it is important to understand that this is an infrastructure issue will not be achieved of the course of one surface transportation authorization cycle. However, we can change our Federal policies in such a way that improves how Federal dollars are spent on highway and bridge maintenance so that the taxpayer gets a better return on their transportation taxes.

Breaking the cycle of neglected road and bridge maintenance that stems from allowing a highway facility to decline to into poor or very poor condition in the first place is critical to improving the quality of investment of Federal transportation dollars.

Highway investment figures from the American Association of State Highway and Transportation Officials: ''Rough Roads Ahead: Fix It Now or Pay for It Later'' demonstrate that neglecting maintenance and instead waiting for the road surface to reach a condition rating of ''very poor'', on average 16 years, before repairing the road cost nearly twice as much, on average, as compared with making biannual investments to maintain a ''very good'' road condition over that same 16-year period. Not to mention the costs in

damage to vehicles that is caused by the years that a road spends in fair, poor, or very poor condition.

My Preservation and Renewal of Federal-Aid Highways Act aims to create a culture of sound transportation investment while providing the States improved resources and flexibility to keep their highway facilities in a state of good repair.

The Preservation and Renewal of Federal-Aid Highways Act will establish policies that require the Secretary of Transportation to establish ''state of good repair standards'' for the various classes of Federal-Aid highways to serve as benchmarks of achievement for States to reach.

The act will require States to use an ''Asset Management Process'' to develop ''State System Preservation and Renewal Plans'' and ''State System Preservation and Renewal Performance Targets'' to ensure that their Federal-Aid roads are being kept in a state of good repair.

The act will consolidate the Interstate Maintenance program, Highway Bridge program and half of the National Highway System Federal-Aid highway programs funds together to create a flexible System Preservation and Renewal Program Fund for the States to use as they see fit to meet the goals of their System Preservation and Renewal Plans and Performance Targets.

Both the Federal Government and the States are facing enormous challenges to deliver essential services, like well-maintained, safe and efficient roads, for the country. As with any proposal that calls for a change in the way business is done there needs to be adequate time for transition. My bill, while establishing new standards for maintaining the quality of highways and bridges, also takes special care to grant leeway during emergency circumstances, when essential defense infrastructure investments are needed, and gives consideration to States that have planned to use these newly consolidated funds prior to how these funds would be repurposed under this legislation.

The backlog of maintenance and repair on our existing transportation infrastructure can no longer be ignored. In recent years, our country has experienced a number of tragic incidents that resulted in the loss of life as a direct result of the poor condition of transportation infrastructure. These are preventable incidents that are costly in so many ways. We must make transportation system preservation and renewal a priority because it makes good fiscal sense, good safety sense, and good business sense for our country. My bill does this in a collaborative way between the States and the U.S. Department of Transportation.

I urge my colleagues to support my effort to make improved investments in our existing transportation infrastructure so as to ensure its continued excellence for years to come by cosponsoring the Preservation and Renewal of Federal-Aid Highways Act.

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. 1193

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 ''Federal-Aid Highway Preservation and Renewal Program Act of 2011''.

SEC. 2. SYSTEM PRESERVATION AND RENEWAL PROGRAM.

(a) IN GENERAL.—Section 119 of title 23, United States Code, is amended to read as follows:

''§ 119. System preservation and renewal program

''(a) DEFINITIONS.—In this section:

''(1) ASSET MANAGEMENT.—The term 'asset management' means a strategic process for the management of transportation infrastructure that takes into consideration economic and engineering factors to make cost-effective investment decisions to improve the overall state of good repair of facilities.

''(2) ELIGIBLE COST.—The term 'eligible cost' means, with respect to costs incurred for a project, costs of—

''(A) development and implementation of asset management systems in support of system preservation and renewal plans;

''(B) inspection activities for highway bridges and tunnels in the State;

''(C) reducing or eliminating an identified highway or bridge safety problem;

''(D) training of personnel responsible for inspection of highway tunnels and inspection and load rating of highway bridges in the State;

''(E) data collection to monitor the condition of highways and highway bridges in the State;

''(F) environmental restoration and pollution abatement to offset or mitigate the impacts of a project eligible under subparagraph (A);

''(G) control of terrestrial and aquatic noxious weeds and establishment of non-native plant species within the limits of a project eligible under subparagraph (A); and

''(H) implementation of the policy established pursuant to subsection (l)(1).

''(3) ELIGIBLE HIGHWAY FACILITY.—The term 'eligible highway facility' means—

''(A) a highway located on a Federal-aid highway;

''(B) a bridge located on a Federal-aid highway;

''(C) a bridge not located on a Federal-aid highway; and

''(D) a bicycle or pedestrian lane, path, walkway, or similar travel surface located within the right-of-way of a Federal-aid highway.

''(4) ELIGIBLE PROJECT.—The term 'eligible project' means a project that is—

''(A)(i) a project for resurfacing, restoration, rehabilitation, replacement, or reconstruction of an eligible highway facility;

''(ii) a project for preservation, protection, or other preventive repair of an eligible highway facility; or

''(iii) a project to reduce or eliminate an identified highway safety problem, if the project—

''(I) is eligible under section 148; and

''(II) has a cost of less than $10,000,000; and

''(B) consistent with the investment strategy of the State in which the project is to be carried out.

''(5) INVESTMENT STRATEGY.—The term 'investment strategy' means a State investment strategy established under subsection (h)(2)(B).

''(6) OVERALL STATE OF GOOD REPAIR STANDARDS.—The term 'overall state of good repair standards' means the performance standards established under subsection (f)(1)(B).

''(7) PRESERVATION.—

''(A) IN GENERAL.—The term 'preservation' means any cost-effective activity to prevent, delay, or reduce deterioration on an eligible highway facility, including preventive and corrective actions.

''(B) EXCLUSION.—The term 'preservation' does not include structural or operational improvement beyond the originally designed traffic capacity of an existing highway facility except to the extent the improvement occurs as an incidental result of the preservation activity or improves safety.

''(8) PROGRAM.—The term 'program' means the system preservation and renewal program established under subsection (b).

''(9) PROTECTION.—The term 'protection', with respect to a highway, means the conduct of an activity or action associated with the design and construction of measures to protect highways from hazards such as earthquakes, floods, scour, icing, vessel collision, vehicular impact, and security threats.

''(10) STATE OF GOOD REPAIR PERFORMANCE TARGET.—The term 'state of good repair performance target' means a performance target established under subsection (f)(2).

''(11) SYSTEM PRESERVATION AND RENEWAL FUNDS.—The term 'system preservation and renewal funds' means funds apportioned under sections 104(b)(4), 104(m), and 144(e) for the program.

''(12) SYSTEM PRESERVATION AND RENEWAL PLAN.—The term 'system preservation and renewal plan' means a system preservation and renewal plan established by a State under subsection (h).

''(b) ESTABLISHMENT.—The Secretary shall establish and implement a surface transportation infrastructure preservation and renewal program designed to maintain and preserve the quality, efficiency, safety, and value of Federal-aid highways and Federal-aid and non-Federal-aid bridges in accordance with this section.

''(c) PURPOSES.—The purposes of the program shall be—

''(1) to establish national priorities and goals for bringing Federal-aid highways and Federal-aid and non-Federal-aid bridges into a state of good repair and preserving that state of good repair;

''(2) to focus Federal investment on preserving and improving the condition of roadways and bridges; and

''(3) to strengthen the connection between the use by a State of Federal surface transportation funding and the accomplishment of performance outcomes.

''(d) USE OF APPORTIONED FUNDS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under the program for—

''(A) eligible projects; and

''(B) eligible costs.

''(2) PRIORITY FOR NATIONAL HIGHWAY SYSTEM PROJECTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a State shall give priority to eligible projects that help meet the overall state of good repair standards for the National Highway System under subsection (f)(1)(B).

''(B) EXCEPTION.—This paragraph shall not apply to any State that is meeting the overall state of good repair standards for the National Highway System established under subsection (f)(1)(B), as determined by the Secretary.

''(3) LIMITATION.—

''(A) IN GENERAL.—A project cost attributable to expansion of the capacity of a highway located on a Federal-aid highways shall not be eligible for funding under this section if the new capacity consists of 1 or more new travel lanes that are not auxiliary lanes.

''(B) NON-FEDERAL-AID BRIDGES.—

''(i) IN GENERAL.—Not less than 15 percent of the amount apportioned to each State under section 144(e) for each of fiscal years 2012 through 2017 shall be expended for projects to preserve, rehabilitate, protect, or replace highway bridges, other than those bridges on Federal-aid highways.

''(ii) REDUCTION IN EXPENDITURES.—The Secretary, after consultation with State and local officials, may reduce the amount required to be expended under clause (i) for bridges in the State that are not located on a Federal-aid highway if the Secretary determines that the State has inadequate needs to justify the expenditure.

''(4) EXCEPTION.—

''(A) DEBT FINANCING INSTRUMENTS.—Prior to the apportionment of funds made available for a program, a State may deduct amounts sufficient for the payment of any debt-financing instruments committed, guaranteed, or obligated to a third party before the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011 for eligible projects under this title (including this section) and title 49.

''(B) DEFENSE BASE CLOSURE AND REALIGNMENT IMPACTS.—Before October 1, 2013, a State may use up to 25 percent of the funds of the State for system preservation and renewal for projects to address transportation impacts relating to decisions of the Defense Base Closure and Realignment Commission.

''(e) OTHER ELIGIBLE COSTS.—In addition to the funds obligated for eligible projects, a State may obligate, in the aggregate, not to exceed 5 percent of the funds apportioned to the State under the program for a fiscal year to pay other eligible costs.

''(f) SYSTEM PRESERVATION AND RENEWAL PERFORMANCE STANDARDS AND TARGETS.—

''(1) SECRETARY RESPONSIBILITIES.—Not later than 1 year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, the Secretary shall, by regulation and in consultation with States, establish—

''(A) criteria for determining the state of good repair of eligible highway facilities, based on highway pavement condition or bridge structural adequacy, as applicable; and

''(B) overall state of good repair standards for each class of infrastructure described in paragraph (3), based on the criteria established under subparagraph (A).

''(2) STATE RESPONSIBILITIES.—Not later than 2 years after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, and every 2 years thereafter, each State, in conjunction with the development of the system preservation and renewal plan of the State, shall establish or revise, for each class of infrastructure described in paragraph (3), quantifiable State of good repair performance targets that, at a minimum, estimate the projected percentage change over a 2-year period of infrastructure that is rated as being not in state of good repair based on the criteria established under paragraph (1)(B).

''(3) CLASSES OF INFRASTRUCTURE.—The classes of infrastructure referred to in paragraph (1) are—

''(A) the total deck area of highway bridges in a State that are located on the National Highway System;

''(B) the total deck area of highway bridges in a State that are located on Federal-aid highways;

''(C) the total lane miles in a State that are located on the National Highway System; and

''(D) the total lane miles in a State that are located on Federal-aid highways.

''(4) COMPLIANCE.—If a State meets an overall state of good repair standard established under paragraph (1)(B) for a class of infrastructure described in paragraph (3), that class of infrastructure in the State shall be considered to be in a state of good repair.

''(5) APPLICABILITY.—No State shall be required to establish state of good repair performance targets under paragraph (2) for any class of infrastructure that a State certifies as meeting the overall state of good repair standard under paragraph (1)(B).

''(g) STATE ASSET MANAGEMENT PROCESS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, a State shall develop an asset management process to support the development and implementation of system preservation and renewal plans under subsection (h).

''(2) REQUIREMENTS.—The process developed under paragraph (1) shall be based on analytical mechanisms to identify cost-effective investments to preserve, rehabilitate, restore, resurface, reconstruct, protect, or replace Federal-aid highways and highway bridges on Federal-aid highways to improve the overall state of good repair of those highways and bridges.

''(h) STATE SYSTEM PRESERVATION AND RENEWAL PLANS.—

''(1) SUBMISSION OF PLANS.—Not later than 2 years after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011 and biennially thereafter, a State shall develop or update, as applicable, and submit to the Secretary for approval, a system preservation and renewal plan.

''(2) PLAN REQUIREMENTS.—A system preservation plan of a State and any update of such a plan shall—

''(A) include documentation on the state of good repair based on the criteria under paragraph (f)(1) and each class of infrastructure described in subsection (f)(3);

''(B) include an investment strategy that—

''(i) covers a period of 6 years; and

''(ii) describes the manner in which the State will allocate funds apportioned to the State to carry out this section among, at a minimum—

''(I) facilities in good condition, fair condition, and poor condition;

''(II) projects located on each class of infrastructure described in subsection (f)(2);

''(III) projects that vary with respect to geographical location, as determined by the State; and

''(IV) other eligible costs;

''(iii) is based on an asset management process under subsection (g);

''(iv) describes any Federal, State, local, or private funds that the State plans to use, in addition to system preservation and renewal funds, on projects that would help to meet the state of good repair performance targets established under this section;

''(v) indicates the number of lane miles of highways and quantity of deck area on highway bridges that the State would address through the allocations described in clause (ii); and

''(vi) subject to subsection (d)(2), provides for investment in projects that, once completed, would allow the State to meet the applicable state of good repair performance targets;

''(C) include a description of the extent to which the use by the State of system preservation and renewal funds apportioned to the State during the 2 most recent fiscal years was consistent with the investment strategy of the State, including—

''(i) an identification of the number of lane miles of highways and quantity of deck area on highway bridges on which the State has used those funds during those 2 fiscal years;

''(ii) an identification of the distribution of highway and bridge facilities, by level of ownership (Federal, State, tribal, and local) and by functional classification, on which the State has obligated those funds during those 2 fiscal years;

''(iii) an assessment of the progress that the State has made toward meeting each of the state of good repair performance targets of the State based on the projects that the State has carried out under this section and the contribution that those projects have made or would make, once complete, to the State meeting those performance targets; and

''(iv) a description of the expenditure of funds on a geographical basis, as determined by the State; and

''(D) describe the manner in which the investment strategy of the State would enable the State—

''(i) to meet the state of good repair performance targets of the State; and

''(ii) improve the condition of the classes of infrastructure described in subsection (f)(3) in the State.

''(3) PUBLIC AVAILABILITY OF PLAN.—A State shall make the system preservation and renewal plan of the State, and each update of the plan, available to the public.

''(i) FAILURE TO MEET STATE OF GOOD REPAIR PERFORMANCE TARGETS.—

''(1) IN GENERAL.—If a State does not meet the biennial system preservation and renewal performance targets under this section, the State shall coordinate with the Secretary to direct portions of Federal funds available under this title to the State toward projects eligible under this section in order to meet the state of good repair performance targets under this section.

''(2) WAIVER.—The Secretary may temporarily waive the application of this subsection if—

''(A) unforeseen events significantly impact the ability of a State to meet the biennial state of good repair performance targets; or

''(B) eligible facilities under this section in the State have suffered serious damage due to an event that results in the declaration of—

''(i) an emergency by the Governor of the State; or

''(ii) a major disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(j) OVERSIGHT.—Beginning for the third fiscal year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, and at least biennially thereafter or at such other times or intervals as are determined to be necessary by the Secretary, the Secretary, in conjunction with the submission of the State system preservation and renewal plan under subsection (g), shall conduct oversight activities to assess whether the use by each State of funds under this section is consistent with the investment strategy of the State under this section.

''(k) BIENNIAL REPORT TO CONGRESS.—Not later than September 30, 2013, and biennially thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report containing—

''(1) an evaluation of the performance of each State with respect to—

''(A) the investment strategy of the State under this section; and

''(B) the system preservation and renewal performance targets established for the State under this section; and

''(2) such recommendations as the Secretary may provide for improvements of the program.

''(l) ADDITIONAL REQUIREMENTS.—

''(1) SAFE STREETS POLICY.—Not later than 2 years after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, each State shall develop a policy applicable to any project funded, in whole or in part, under the program that—

''(A) ensures the adequate accommodation, in all phases of project planning and development, of all users of the transportation system, including—

''(i) pedestrians;

''(ii) bicyclists;

''(iii) public transit users;

''(iv) older individuals;

''(v) motorists;

''(vi) individuals with disabilities; and

''(vii) users of motor vehicles with a taxable gross weight (as defined in section 4481 of the Internal Revenue Code of 1986) in excess of 55,000 pounds;

''(B) ensures the consideration of the safety and convenience of all users in all phases of project planning and development; and

''(C) delineates a clear procedure that gives due consideration to the geographical location, road classification, population density, and other demographic factors by which projects funded, in whole or in part, under this program may be exempted from complying with the policy.

''(2) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation activities located within an existing right-of-way funded under the program.

''(3) MAINTENANCE OF EFFORT PROVISION.—

''(A) IN GENERAL.—For any fiscal year for which a State receives funds pursuant to this section, the State shall certify to the Secretary that the State will expend funds for the maintenance and operations of facilities in an amount that is at least equal to the average annual amount of funds expended over the preceding 3 fiscal years.

''(B) FORM AND DEADLINE.—A certification described in subparagraph (A) shall be submitted in such form and not later than such date as shall be determined by the Secretary.

''(C) PENALTY FOR NONCOMPLIANCE.—If a State fails to provide a certification to the Secretary in accordance with subparagraph (A), the Secretary shall withhold from the State, for each fiscal year until such time as the State submits the certification in accordance with subparagraph (A), an amount equal to 10 percent of the amounts the State would have received under this section for the fiscal year.

''(D) WAIVER.—The Secretary may temporarily waive the application of this paragraph if unforeseen events significantly impact the ability of a State to meet the biennial state of good repair performance targets.

''(m) APPLICABILITY OF PLANNING REQUIREMENTS.—Nothing in this section limits the applicability of sections 134 and 135 to projects carried out under this section.

''(n) CONTINUATION OF CURRENT REVIEW PRACTICE.—Because each individual project that is carried out under the investment strategy described in the system preservation and renewal plan of a State is subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), a decision by the Secretary concerning a system preservation and renewal plan or an update of the plan in connection with this section shall not be considered to be a Federal action subject to review under that Act.

''(o) TRANSFER OF NHS, BRIDGE PROGRAM, AND INTERSTATE MAINTENANCE APPORTIONMENTS.—On application by a State and approval by the Secretary, the Secretary may transfer to the apportionment of the State under section 104(b)(1) the amount of funds apportioned to the State for a fiscal year ending before October 1, 2010, under paragraphs (1) and (4) of section 104(b), and section 144(e) (as those sections were in effect on the day before the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011), that remains available for expenditure by the State.

''(p) REGULATIONS ON PERFORMANCE MEASURES OF STRUCTURAL ADEQUACY.—Not later than 1 year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, the Secretary shall promulgate such regulations as are necessary to carry out this section.''.

(b) APPLICATION TO SYSTEM PRESERVATION AND RENEWAL FUNDS.—Section 126 of title 23, United States Code, is amended—

(1) in subsection (a), by striking ''subsections (b) and (c)'' and inserting ''subsections (b), (c) and (d)''; and

(2) by adding at the end the following:

''(d) APPLICATION TO SYSTEM PRESERVATION AND RENEWAL FUNDS.—

''(1) IN GENERAL.—A State may transfer funds apportioned to the State under section 104(m) for the system preservation and renewal program if the State meets the overall state of good repair standards established under section 119(f)(1)(B) for classes of infrastructure under subparagraphs (A) and (C) of sections 119(f)(3).

''(2) GOOD REPAIR STANDARDS.—A State may transfer funds apportioned to the State under sections 104(b)(4) and 144(e) for the system preservation and renewal program if the State meets each of the overall state of good repair standards established under section 119(f)(1)(B).''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 119 and inserting the following:

''Sec. 119. System preservation and renewal program.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 104 of title 23, United States Code, is amended by adding at the end the following:

''(m) SYSTEM PRESERVATION AND RENEWAL.—Notwithstanding any other provision of this section, ½ of the funds apportioned to a State under subsection (b)(1) shall be used for system preservation and renewal under section 119 of title 23, United States Code.''.

(2) Section 105 of title 23, United States Code, is amended in each of subsections (a)(2) and (b)(2) by striking ''the Interstate maintenance program'' each place it appears and inserting ''the system preservation and renewal program''.

(3) Section 118 of title 23, United States Code, is amended—

(A) by striking subsection (c); and

(B) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

By Mr. LEAHY:

S. 1194. A bill to facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I am introducing the Consular Notification Compliance Act. This legislation will help bring the United States into compliance with its obligations under the Vienna Convention on Consular Relations, VCCR, and is critical to ensuring the protection of Americans traveling overseas.

Each year, thousands of Americans are arrested and imprisoned when they are in foreign countries studying, working, serving the military, or traveling. From the moment they are detained, their safety and well-being depends, often entirely, on the ability of United States consular officials to meet with them, monitor their treatment, help them obtain legal assistance, and connect them to family back home. That access is protected by the consular notification provisions of the VCCR, but it only functions effectively if every country meets its obligations under the treaty—including the United States.

Unfortunately, in some instances, the United States has not been meeting those obligations. There are currently more than 100 foreign nationals on death row in the United States, most of whom were never told of their right to contact their consulate and their consulate was never notified of their arrest, trial, conviction, or sentence. There are many other foreigners in U.S. prisons awaiting trial for non-capital crimes, some facing life sentences, who were similarly denied consular access. This failure to comply with our treaty obligations undercuts our ability to protect Americans abroad and deeply damages our image as a country that abides by its promises and the rule of law. It would also be completely unacceptable to us if our citizens were treated in this manner.

The Consular Notification Compliance Act seeks to bring the United States one step closer to compliance with the convention. It is not perfect. It focuses only on the most serious cases—those involving the death penalty—but it is a significant step in the right direction and we need to work together to pass it quickly. Texas is poised to execute the next foreign national affected by this failure to comply with the treaty on July 7, 2011. He was not notified of his right to consular assistance, and the Government of Mexico has expressed grave concerns about the case. We do not want this execution to be interpreted as a sign that the United States does not take its treaty obligations seriously. That message puts American lives at risk. The Government of Great Britain has expressed similar concerns about a case involving a British citizen facing the death penalty here, who was denied consular access.

The bill I am introducing would allow foreign nationals who have been convicted and sentenced to death to ask a court to review their cases and determine if the failure to provide consular notification led to an unfair conviction or sentence.

The bill also recognizes that law enforcement and the courts must do a better job in the future to promptly notify individuals of their right to consular assistance so the United States does not find itself in this precarious position again. To that end, the bill reaffirms that the obligations under the treaty are Federal law and apply to all foreign nationals arrested or detained in the United States. For individuals arrested on charges that carry a possible punishment of death, the bill ensures adequate opportunity for consular assistance before a trial begins.

This bill offers very limited remedies to a very limited number of people. I am troubled that it has to be so narrow, as we demand far broader protection for American citizens abroad every day. However, carrying out a death sentence is an irreversible action, and I believe that we must act quickly. I understand that a limited bill has the best chance of achieving the bipartisan support needed to move forward on such an important issue at this time.

Compliance with our consular notification obligations is not a question of partisan interest. There should be unanimous support for this bill. The VCCR was negotiated under President Kennedy, ratified during the Nixon administration, and it has been fully supported by every President since. President George W. Bush understood the critical need to honor our obligations under this treaty. Although he was ultimately unsuccessful, he vigorously worked to bring the United States into compliance, and he supported action along the lines of what I propose today. He understood the implications of noncompliance for our citizens, our businesses, and our military. I have no doubt President Obama shares the same commitment to resolving this issue.

I saw the need to resolve this issue first-hand this spring when a young, innocent Vermont college student was detained by Syrian police simply for taking photos of a demonstration. I worked hard with the U.S. consulate in Syria to obtain access to him. His safety depended on the ability of our consular officers to see him, provide assistance, and monitor his condition.

Similarly, the United States invoked the VCCR to seek access to the three American hikers detained in Iran after accidently crossing an unmarked border in 2009. In 2001, when a U.S. Navy surveillance plane made an emergency landing in Chinese territory, the State Department cited the VCCR in demanding immediate access to the plane's crew.

I doubt there are many Members of Congress who have not sought similar help from our consulates when their constituents have been arrested overseas. We know how critically important this access is, and we expect other governments to provide it. Those governments expect no less of us.

This bill has the support of the Obama administration, including the Department of Justice, the Department of Defense, the Department of Homeland Security, and the Department of State. I have heard from retired members of the military urging passage of the bill to protect service men and women and their families overseas, and from former diplomats of both political parties who know that compliance with our treaty obligations is critical for America's national security and commercial interests.

Given the long history of bipartisan support for the VCCR, there should be unanimous support for this legislation to uphold our treaty obligations. A failure to act places Americans at risk.

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

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

S. 1194

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 ''Consular Notification Compliance Act of 2011''.

SEC. 2. PURPOSE AND STATEMENT OF AUTHORITY.

(a) PURPOSE.—The purpose of this Act is to facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963 and any comparable provision of a bilateral international agreement addressing consular notification and access.

(b) STATEMENT OF AUTHORITY.—This Act is enacted pursuant to authority contained in articles I and VI of the Constitution of the United States.

SEC. 3. CONSULAR NOTIFICATION AND ACCESS.

(a) IN GENERAL.—As required under, and consistent with, Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963 and any comparable provision of a bilateral international agreement addressing consular notification and access, if an individual who is not a national of the United States is detained or arrested by an officer or employee of the Federal Government or a State or local government, the arresting or detaining officer or employee, or other appropriate officer or employee of the Federal Government or a State or local government, shall notify that individual without delay that the individual may request that the consulate of the foreign state of which the individual is a national be notified of the detention or arrest.

(b) NOTICE.—

(1) IN GENERAL.—The consulate of the foreign state of which an individual detained or arrested is a national shall be notified without delay if the individual requests consular notification under subsection (a), and an appropriate officer or employee of the Federal Government or a State or local government shall provide any other consular notification required by an international agreement.

(2) FIRST APPEARANCE.—If an appropriate officer or employee of the Federal Government or a State or local government has not notified the consulate described in paragraph (1) regarding an individual who is detained pending criminal charges and the individual requests notification or notification is mandatory under a bilateral international agreement, notification shall occur not later than the first appearance of the individual before the court with jurisdiction over the charge.

(c) COMMUNICATION AND ACCESS.—An officer or employee of the Federal Government or a State or local government (including an officer or employee in charge of a facility where an individual who is not a national of the United States is held following detention or arrest) shall reasonably ensure that the individual detained or arrested is able to communicate freely with, and be visited by, officials of the consulate of the foreign state of which the individual detained or arrested is a national, consistent with the obligations described in section 2(a).

(d) NO CAUSE OF ACTION.—Nothing in this section is intended to create any judicially or administratively enforceable right or benefit, substantive or procedural, by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person or entity, including, an officer, employee, or agency of a State or local government.

SEC. 4. PETITION FOR REVIEW.

(a) IN GENERAL.—

(1) JURISDICTION.—Notwithstanding any other provision of law, a Federal court shall have jurisdiction to review the merits of a petition claiming a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access, filed by an individual convicted and sentenced to death by any Federal or State court before the date of enactment of this Act.

(2) DATE FOR EXECUTION.—If a date for the execution of an individual described in paragraph (1) has been set, the court shall grant a stay of execution if necessary to allow the court to review a petition filed under paragraph (1).

(3) STANDARD.—To obtain relief, an individual described in paragraph (1) shall make a showing of actual prejudice to the criminal conviction or sentence as a result of the violation. The court may conduct an evidentiary hearing if necessary to supplement the record and, upon a finding of actual prejudice, shall order a new trial or sentencing proceeding.

(4) LIMITATIONS.—

(A) IN GENERAL.—A petition for review under this section shall be filed within 1 year of the later of—

(i) the date of enactment of this Act;

(ii) the date on which the Federal or State court judgment against the individual described in paragraph (1) became final by the conclusion of direct review or the expiration of the time for seeking such review; or

(iii) the date on which the impediment to filing a petition created by Federal or State action in violation of the Constitution or laws of the United States is removed, if the individual described in paragraph (1) was prevented from filing by such Federal or State action.

(B) TOLLING.—The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward the 1-year period of limitation.

(5) HABEAS PETITION.—A petition for review under this section shall be part of the first Federal habeas corpus application or motion for Federal collateral relief under chapter 153 of title 28, United States Code, filed by an individual, except that if an individual filed a Federal habeas corpus application or motion for Federal collateral relief before the date of enactment of this Act or if such application is required to be filed before the date that is 1 year after the date of enactment of this Act, such petition for review under this section shall be filed not later

than 1 year after the enactment date or within the period prescribed by paragraph (4)(A)(iii), whichever is later. No petition filed in conformity with the requirements of the preceding sentence shall be considered a second or successive habeas corpus application or subjected to any bars to relief based on pre-enactment proceedings other than as specified in paragraph (3).

(6) APPEAL.—

(A) IN GENERAL.—A final order on a petition for review under paragraph (1) shall be subject to review on appeal by the court of appeals for the circuit in which the proceeding is held.

(B) APPEAL BY PETITIONER.—An individual described in paragraph (1) may appeal a final order on a petition for review under paragraph (1) only if a district or circuit judge issues a certificate of appealability. A district judge or circuit judge may issue a certificate of appealability under this subparagraph if the individual has made a substantial showing of actual prejudice to the criminal conviction or sentence of the individual as a result of a violation of Article 36(1) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or a comparable provision of a bilateral international agreement addressing consular notification and access.

(b) VIOLATION.—

(1) IN GENERAL.—An individual not covered by subsection (a) who is arrested, detained, or held for trial on a charge that would expose the individual to a capital sentence if convicted may raise a claim of a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or of a comparable provision of a bilateral international agreement addressing consular notification and access, at a reasonable time after the individual becomes aware of the violation, before the court with jurisdiction over the charge. Upon a finding of such a violation—

(A) the consulate of the foreign state of which the individual is a national shall be notified immediately by the detaining authority, and consular access to the individual shall be afforded in accordance with the provisions of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, or the comparable provisions of a bilateral international agreement addressing consular notification and access; and

(B) the court—

(i) shall postpone any proceedings to the extent the court determines necessary to allow for adequate opportunity for consular access and assistance; and

(ii) may enter necessary orders to facilitate consular access and assistance.

(2) EVIDENTIARY HEARINGS.—The court may conduct evidentiary hearings if necessary to resolve factual issues.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to create any additional remedy.

SEC. 5. DEFINITIONS.

In this Act—

(1) the term ''national of the United States'' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

(2) the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

JUNE 14, 2011.

Re The Consular Notification Compliance Act.

Hon. PATRICK J. LEAHY,
Chairman, U.S. Senate Committee on the Judiciary, Washington, DC.
Hon. CHARLES E. GRASSLEY,
Ranking Member, U.S. Senate Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: We write to urge you to support prompt passage of the Consular Notification Compliance Act, legislation that would give domestic legal effect to U.S. obligations under the Vienna Convention on Consular Relations (Vienna Convention) to provide consular access to foreign nationals in U.S. law enforcement custody by providing for judicial review of certain claims that this obligation has not been satisfied. International consular notification and access obligations are essential to ensuring humane, non-discriminatory treatment for both non-citizens in U.S. custody and U.S. citizens in the custody of foreign governments. As retired military leaders, we understand that the preservation of consular access protections is especially important for U.S. military personnel, who when serving our country overseas are at greater risk of being arrested by a foreign government.

U.S. military personnel are at risk for being taken into foreign custody after accidental incursions into foreign territories, while on leave or furlough, or while stationed abroad pursuant to, or in absence of a Status of Forces Agreement (SOFA). When American military personnel or their family members find themselves in foreign custody, consular access is indispensable in allowing the U.S. government to fulfill its duty to ensure fair and humane treatment for such individuals.

For example, in 2001 when a U.S. Navy surveillance plane made an emergency landing in Chinese territory after colliding with a Chinese jet, the State Department cited the Vienna Convention and other consular treaties in demanding immediate access to the plane's crew. Chinese authorities responded by granting consular visits to the crew members, who were detained in China for 11 days. Moreover, military regulations implementing SOFA requirements anticipate that consular officers will assist the designated commanding officer in key areas such as protesting inhumane treatment and ensuring that the individual has access to an adequate defense.

The strength of consular access protections for U.S. military personnel abroad is dependent on the United States' reciprocal commitment to fulfill its obligations at home. But given the Supreme Court's 2008 decision in Medellin v. Texas, the executive branch is unable, without further action by Congress, to enforce certain consular protections under the Vienna Convention with regards to U.S. state law enforcement personnel. In light of the Medellin decision, additional legislation is needed to ensure the integrity of the consular notification and access rights upon which U.S. service members rely.

Legislation to ensure review and appropriate relief if needed when a foreign national faces or is sentenced to death, while relatively limited in scope, would improve foreign governments' confidence in the United States' ability to uphold its consular access obligations, making it more likely that such governments will giant this access to Americans in their custody.

Improving U.S. enforcement of its consular notification and access legal obligations will help protect American citizens detained abroad, including U.S. military personnel and their families stationed overseas. We urge you to support those who are serving our country overseas by ensuring swift passage of the Consular Notification Compliance Act to meet our international responsibilities.

Sincerely,

Rear Admiral Don Guter, USN (Ret.).
Rear Admiral John D. Hutson, USN (Ret.).
Brigadier General James P. Cullen, USA (Ret.).
Brigadier General David R. Irvine, USA (Ret.).
Brigadier General Murray G. Sagsveen, USA (Ret.).
Colonel Lawrence B. Wilkerson, USA (Ret.).

JUNE 14, 2011.

Re The Consular Notification Compliance Act.

Hon. PATRICK J. LEAHY,
Chairman, U.S. Senate Committee on the Judiciary, Washington, DC.
Hon. CHARLES E. GRASSLEY,
Ranking Member, U.S. Senate Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: As former U.S. diplomats and State Department officials, we write to urge your support for the Consular Notification Compliance Act, legislation that we believe is vitally important to meeting the United States' foreign policy objectives and to protecting the interests of its citizens abroad. We urge you to act promptly to enact this legislation that would secure compliance with the United States' binding treaty obligations by providing a review mechanism for the cases of foreign nationals who—without the benefit of timely consular notification and access—were convicted and received death sentences.

Each year, thousands of Americans are detained abroad. Prompt knowledge of and access to our fellow-citizens held in foreign jails ensures that U.S. consular officers can help them obtain legal assistance, monitor their treatment, and connect them to family and friends back home. This crucial lifeline of consular support can only function effectively if the detaining authorities comply with their obligations under Article 36 of the Vienna Convention on Consular Relations, which grants all foreigners in custody the right to consular notification, communication and access ''without delay.'' Insisting on compliance with and protesting violations of Article 36 provisions has thus long been an integral element of the U.S. policy of providing protective consular services to detained Americans overseas.

For instance, when three Americans were detained after accidentally crossing an unmarked border into Iran in 2009, a State Department spokesperson insisted that ''Iran has obligations under the Vienna Convention, and we demand consular access at the first opportunity.'' The Secretary of State later called on the Iranian government ''to live up to its obligations under the Vienna Convention by granting consular access and releasing these three young Americans without further delay.'' Once consular access was finally granted, the State Department ''welcome[d] the fact that Iran is meeting up to its obligations under the Vienna Convention''.

Unfortunately, the United States has sometimes violated Article 36 requirements even as we call on foreign governments to comply with its terms. In 2004, the International Court of Justice (ICJ) determined that some fifty Mexican nationals were entitled to judicial hearings to determine if Article 36 breaches, which were proven to have occurred, affected the fairness of their capital murder convictions and/or sentences.

The United States is required by the U.N. Charter to comply with decisions of the ICJ. President George W. Bush attempted to enforce this decision at the state court level, but the U.S. Supreme Court later ruled in Medellin v. Texas that only Congress could ensure compliance by adopting legislation providing for the compulsory review and reconsideration mandated by the ICJ. The Supreme Court also observed that the ICJ decision undeniably bound the United States under international law and that ''plainly compelling'' reasons existed for its domestic implementation. ''In this case,'' the Medellin Court noted, ''the President seeks to vindicate United States interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law.''

Clearly, the safety and well-being of Americans abroad is endangered by the United States maintaining the double standard of protesting denials of consular notification and access to its own citizens while simultaneously failing to comply with its obligation to remedy identical violations. We cannot realistically expect other nations to continue to comply with consular treaty commitments that we refuse to uphold. For that reason alone, it is essential that Congress act swiftly to provide the limited procedural remedy that both our Executive and Judicial Branches have so clearly indicated is in the national interest.

As the Supreme Court pointed out, however, the United States' interest in implementing these international obligations goes beyond protecting the reciprocal rights and safety of its overseas citizens. Our national security, effective commercial and trade relations relating to our prosperity and almost every matter of national interest, large and small, is covered by reciprocal treaty obligations. We risk jeopardizing these interests if we practice an indifference to these obligations in this or other arenas. We believe that continued non-compliance will surely alienate this nation from its allies. We also believe that any further failure to provide the modest remedy of ''review and reconsideration'' required in these cases will undermine America's credibility as a global champion of the rule of law, thereby seriously hindering our foreign policy objectives. It is worth noting the United States agreed to be bound by the ICJ's decision both before and after the case was heard and has consistently advised multiple international and domestic courts that it is doing everything within its power to comply with this decision. Passing legislation to ensure our nation's compliance needs to be accomplished in order to make good on this representation.

The ability of the United States to secure future international agreements vital to our commercial interests and national security depends largely on whether this nation is perceived as honoring its international obligations. It is vitally important for Congress to mandate judicial enforcement of America's treaty obligations. Anything less jeopardizes our global reputation as a dependable treaty partner. We therefore urge you to support the rapid passage of the Consular Notification Compliance Act to accomplish this end, and thank you for your attention to this important matter.

Sincerely,

Harry Barnes, Jr., U.S. Ambassador to Chile, 1985–1988; U.S. Ambassador to India, 1981–1985; Director General of the Foreign Service 1977–1981; U.S. Ambassador to Romania, 1974–1977.

John B. Bellinger, III, Partner, Arnold & Porter LLP; Legal Advisor to the Department of State, 2005–2009; Legal Advisor to the National Security Council, 2001–2005.

David E. Birenbaum, of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP; Senior Scholar, Woodrow Wilson International Center for Scholars; U.S. Ambassador to the UN for UN Management and Reform, 1994–96.

James R. Jones, U.S. Ambassador to Mexico, 1993–1997; Member of U.S. Congress (D-OK), 1973–1987.

David Charles Miller, Jr., Special Assistant to the President, National Security Council, 1989–1990; U.S. Ambassador to Zimbabwe, 1984–1986; U.S. Ambassador to Tanzania, 1981–1984.

Thomas R. Pickering, Undersecretary of State for Political Affairs, 1997–2000; U.S. Ambassador and Representative to the United Nations, 1989–1992.

William H. Taft, IV, Legal Advisor, U.S. Department of State, 2001–2005; U.S. Ambassador to NATO, 1989–1992.

JUNE 7, 2011.

Governor RICK PERRY,
Office of the Governor, Austin, Texas.
TEXAS BOARD OF PARDONS AND PAROLES,
Austin, Texas.

DEAR GOVERNOR PERRY AND MEMBERS OF THE TEXAS BOARD OF PARDONS AND PAROLES: As former prosecutors and judges, we are strong supporters of a robust and accurate criminal justice system. We are well aware that international consular notification and access, as required under the Vienna Convention on Consular Relations (Vienna Convention), is essential to such a system, and to ensuring non-discriminatory treatment for both non-citizens in U.S. custody and U.S. citizens in the custody of foreign governments; and is also critical to the efficient, effective, and fair operations of criminal justice systems throughout the United States. In light of these important considerations and out of concern for the domestic and international implications of an execution without proper compliance with U.S. international obligations, we are writing to urge you to grant a reprieve in the case of Humberto Leal Garcia. We take no position on the merits of his petition, but believe that a reprieve should take place pending congressional enactment of legislation that would allow foreign nationals who were denied consular access while in law enforcement custody and face the death penalty to receive appropriate review of that failure.

It is appropriate to ensure that our country complies with the laws to which it has obligated itself, and to ensure that those laws apply to our own citizens as well. At all stages of the proceedings, foreign nationals—whether our own citizens in other countries or those from other countries in the United States—face unique disadvantages and challenges when confronted with prosecution and imprisonment under the legal system of another nation. Prompt consular access ensures that they have the means necessary to be advised of their rights and to prepare an adequate defense.

Ensuring prompt consular access to foreigners arrested in the United States also enhances the truth-seeking function that lies at the heart of American justice. Much in the same way as the right to counsel under the Sixth Amendment, consular notification is essential to enabling fair access for those who are unfamiliar with our legal system. As Chief Judge Juan Torruella of the United States Court of Appeals for the First Circuit observed, ''Without [consular access], I think that we presume too much to think that an alien can present his defense with even a minimum of effectiveness. The result is injury not only to the individual alien, but also to the equity and efficacy of our criminal justice system.'' U.S. v. Li, 206 F.3d 56, 78 (1st Cir. 2000) (Torruella, C.J., concurring in part and dissenting in part).

Consular assistance provides a unique and indispensable protection for foreign nationals who are unfamiliar with the U.S. criminal justice system. This is true with regard to our own citizens abroad as well. As many domestic courts have recognized, consulates can provide essential resources that are simply not available through other means, particularly in identifying and explaining the ways in which the U.S. criminal justice system differs from their native systems. Early consular access can prevent misunderstandings and missteps by a foreign national that might otherwise prejudice their ability to obtain a fair trial. Consulates can assist defense counsel in locating crucial documents, witnesses, and exonerating evidence available only in their native country and can assist in translations that in too many cases have been demonstrated to be erroneous, thus jeopardizing the accuracy of the proceedings. This can mean the difference between conviction and acquittal, or between life and death.

We want to emphasize that demonstrating our nation's commitment to complying with Vienna Convention obligations is also critical to ensuring the safety of Americans traveling, living and working abroad. The United States expects countries to grant consular notification and access to Americans in law enforcement custody. In return, we pledge to accord the same right to foreign nationals within our borders. In addition, particularly in states bordering Mexico and Canada, cooperation between law enforcement agencies is critical to ensuring the safety of citizens on all sides of the border. These accords are threatened when the United States erects procedural hurdles that prevent foreign nationals from obtaining meaningful judicial review when denied consular notification and access and may well mean that our own citizens' rights will be jeopardized in countries whose citizens' rights have not been respected by the United States.

Providing meaningful enforcement of the Vienna Convention's consular notification and access requirements will increase the efficient, effective, and fair operations of our criminal justice system and protect U.S. citizens abroad. Delaying the execution of Humberto Leal Garcia to ensure full opportunity for congressional action and appropriate review of the case will demonstrate to foreign governments the United States' good faith in upholding its consular access obligations, increasing the likelihood that foreign governments will grant access to Americans in their custody. For these reasons, we strongly urge you to support a reprieve in this case pending congressional action on these matters.

Sincerely,

Hon. Charles F. Baird, Former Judge, Texas Court of Criminal Appeals; Former Judge, 299th District Court of Travis County, Texas.

Hon. William G. Bassler, Former Judge, United States District Court for the District of New Jersey (1991–2006); Former Judge, Superior Court of New Jersey (1988–1991).

A. Bates Butler III, United States Attorney, District of Arizona (1980–81); First Assistant United States Attorney, District of Arizona (1977–80).

Robert J. Del Tufo, Attorney General, State of New Jersey (1990–1993); United States Attorney, District of New Jersey (1977–1980); Former First Assistant State Attorney General and Director of New Jersey's Division of Criminal Justice.

W. Thomas Dillard, United States Attorney, Northern District of Florida (1983–1986); United States Attorney, Eastern District of Tennessee (1981).

Hon. Bruce J. Einhorn, Former United States Immigration Judge (1990–2007); Special Prosecutor and Chief of Litigation,

United States Department of Justice Office of Special Investigations (1979–1990).

Hon. Shirley M. Hufstedler, United States Secretary of Education (1979–1981); Former Judge, United States Court of Appeals for the Ninth Circuit (1968–1979); Former Associate Justice, California Court of Appeal (1966–1968); Former Judge, Los Angeles County Superior Court (1961–1966).

Hon. John J. Gibbons, Former Judge, United States Court of Appeals for the Third Circuit (1970–1990) (Chief Judge (1987–1990)).

Hon. Nathaniel R. Jones, Former Judge, United States Court of Appeals for the Sixth Circuit, (1979–2002); Assistant United States Attorney, Northern District of Ohio (1962–1967).

Hon. Gerald Kogan, Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida.

Kenneth J. Mighell, United States Attorney, Northern District of Texas (1977–1981); Assistant United States Attorney, Northern District of Texas (1961–1977).

Hon. Stephen M. Orlofsky, Former Judge, United States District Court for the District of New Jersey (1995–2003); Magistrate Judge, United States District Court for the District of New Jersey (1976–1980).

Professor Mark Osler, Professor of Law, University of St. Thomas, Minnesota; Former Professor of Law, Baylor University, Texas; Former Assistant United States Attorney, Eastern District of Michigan.

H. James Pickerstein, United States Attorney, District of Connecticut (1974); Chief Assistant United States Attorney, District of Connecticut (1974–1986).

James H. Reynolds, United States Attorney, Northern District of Iowa (1976–1982).

Hon. William S. Sessions, Director of the FBI (1987–1993); Former Judge, United States District Court for the Western District of Texas (1974–1987) (Chief Judge (1980–1987)); United States Attorney, Western District of Texas (1971–1974).

John Van de Kamp, Attorney General of California (1983–1991); District Attorney of Los Angeles County (1975–1983).

Mark White, Governor of Texas (1983–1987); Attorney General, State of Texas (1979–1983); Secretary of State of Texas (1973–1977); Assistant Attorney General, State of Texas (1965–1969).

Hon. Michael Zimmerman, Former Justice, Supreme Court of Utah (1984–2000) (Chief Justice (1994–1998)).

By Mr. GRASSLEY (for himself, Mr. SESSIONS, Mr. RUBIO, Mr. WICKER, Mr. BOOZMAN, Mr. LEE, Mr. HATCH, Mr. VITTER, Mr. COBURN, and Mr. CORKER):

S. 1196. A bill to expand the use of E-Verify, to hold employers accountable, and for other purposes; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, today, I am introducing legislation to expand the E-Verify program and enhance our ability to hold employers accountable for their hiring practices. I am pleased that several of my colleagues have joined me in cosponsoring this commonsense bill titled Accountability Through Electronic Verification Act.

Known as the Basic Pilot Program, E-Verify currently provides employers with a simple, web-based tool to verify the work eligibility of new hires. In 1986, Congress made it unlawful for employers to knowingly hire or employ aliens not eligible to work in the United States. Under current law, if the documents provided by an employee reasonably appear on their face to be genuine, the employer has met its obligation to review the worker's documents.

Unfortunately, since then, identity theft has soared and counterfeit documents have become a thriving industry. Because of this, Congress created the Basic Pilot Program in 1996. Employers in this program can electronically verify a new hires employment authorization with more than 455 million Social Security Administration records, more than 122 million Department of State passport records, and more than 80 million Department of Homeland Security immigration records.

This program is voluntary and free for all employers to use. In fact, it is currently used by 269,913 employers representing 903,358 hiring sites. More than 11.3 million queries have been made this year. During fiscal year 2010, more than 98.3 percent of those were verified almost instantly.

Less than 1.7 percent of employees receive a tentative non-confirmation, and must sort out their records with the Social Security Administration. Many times, it is a simple misunderstanding relating from a typo to neglecting to update records after a name change.

With the program set to expire in a little over a year, I see the need to continue its use, without an expiration date. E-Verify is a proven tool in combatting illegal immigration. With the unemployment rate hovering around 9.1 percent, can we afford not to use every instrument available to ensure Americans and legal workers are the ones obtaining employment?

My legislation would make E-Verify a staple in the workplace so that American workers are on a level playing field with cheaper labor. Should an employer refuse to participate, my bill increases the penalties currently used under the Immigration and Nationality Act. Employers would be required to check the status of current employees within 3 years, and would allow employers to run a check prior to offering a job, saving that employer valuable time and resources. Employers will also be required to re-check those workers whose authorization is about to expire, such as those who come to the United States on visas. These visas have expiration dates, and it is imperative we do not allow employers to aide in the overstaying of any alien.

A commonsense fix that is also included would require the Social Security Administration to develop algorithm technology that would flag social security numbers that are being used more than once. You would think the Social Security Administration would already have this in place, but sadly they do not. This provision alone will save many from falling victim to identity theft.

For those who do find themselves victim of identity theft, this bill would amend the criminal code to clarify identity fraud is punishable regardless if the defendant did not have knowledge of the victim. This provision stems from the 2009 Supreme Court decision holding that identity theft requires proof that an individual knew the number being used belonged to an actual person. This is a commonsense and long overdue provision. Anyone who has had their identity stolen by an illegal alien would agree. We need to strengthen our laws to deter the robust black market for fraudulent documents.

Another provision in the bill, which I know will benefit many rural areas such as small towns in Iowa, would help those businesses without internet capabilities to participate in E-Verify. Requiring the U.S. Citizenship and Immigration Services to establish a demonstration project in these rural areas will greatly measure the needs of our rural employers and involve the small business community.

Some may want to criticize the database used to check employees, but with continued enhancements, we are making great strides. For instance, just this past March, the Department of Homeland Security initiated the ''Self Check'' program to allow workers in five States and the District of Columbia to self-check employment eligibility. One of my staffers used Self Check and received confirmation of work authorization almost instantly. The entire process took her less than 90 seconds.

Another development is the recent launch to include U.S. passport photo matching capabilities. This further enhances the integrity of the program by enabling E-Verify to automatically check the validity and authenticity of all U.S. passports and passport cards presented for employment verification checks. E-Verify is supported by many. Most notably by DHS Secretary Janet Napolitano who has said, ''E-Verify is a smart, simple, and effective tool that allows us to work with employers to help them maintain a legal workforce.'' According to DHS, the ''E-Verify program infrastructure is capable of handling the volume of queries that would be necessary for a nationwide mandatory employment verification system.'' DHS has been preparing for such an occasion, and I'm pleased to put forward my proposal today.

For those who were here during the 2007 immigration debate, you may remember that I, Senator BAUCUS and then-Senator Obama worked very closely on the issue of employment verification. I have kept many of the principles agreed upon in 2007 and included them in this bill. With that said, I look forward to hearing from my colleagues with any ideas they may have to strengthen this system.

While everyone may not agree with every aspect of this bill, it serves as a starting point for a much-needed conversation about illegal immigration and our struggling job market. People

back home want employers to be held accountable. They want to see our government do more to make sure we are reducing the magnet for people to cross our borders illegally. I hope more colleagues will join me in my effort to achieve accountability through electronic verification.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. BARRASSO, Mr. INHOFE, Mr. VITTER, Mr. LUGAR, and Mr. GRASSLEY):

S.J. Res. 19. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, today is Flag Day and it is the perfect day to re-introduce a constitutional amendment that would allow Congress to protect the American flag from physical desecration. I am joined in doing so today by my friend, the distinguished Senator from Montana, Senator BAUCUS. He was an original cosponsor of this amendment on 6 previous occasions when I have introduced it, including in the 109th Congress when this body came within one vote of approving it.

The American flag is a unique symbol of our country, of its history, and of our shared values. There is, in fact, no more powerful unifying general symbol. At the same time, the flag no doubt means different specific things to different individuals; Congress cannot, and should not attempt to, dictate what Americans believe, think, or say about the flag and whatever it represents to individuals.

That said, Congress should have authority to protect this unique symbol from at least physical desecration. The Supreme Court stripped even that authority from Congress in 1990 when it held that physical desecration is ''speech'' protected by the First Amendment. I believe the Court was wrong in that conclusion, but because the Court claimed to speak for the Constitution, the only way for Congress once again to have authority to protect the flag is by amending the Constitution.

In his farewell address in 1796, President George Washington said that the very basis of our political system is the right of the people to make and to alter the Constitution. The Constitution belongs to the people, not to the Supreme Court. As a result, the American people must have the opportunity to decide whether their Constitution should allow Congress to protect the flag.

The amendment we introduce today is as simple as it can be. It states: ''The Congress shall have power to prohibit the physical desecration of the flag of the United States.'' Unfortunately, simplicity does not prevent distortion, either by negligence or intention. Critics and some in the media have led many to believe that this amendment by itself bans flag desecration. It does not. In fact, should Congress propose and the states ratify this amendment, it might not result in any change in the law at all. That would be up to Congress and the people we represent to decide.

The issue is that today Congress is today prohibited by the Supreme Court from passing laws that protect the flag even if 100 percent of the American people wanted those laws and the Congress was ready to enact them.

The American people should be given the opportunity to decide whether they want their Constitution to allow their Congress to pass laws protecting the American flag. That is the way a representative democracy like ours should function. The Supreme Court distorted that process and this amendment will correct the Court's error. I urge my colleagues on both sides of the aisle, as many of you have done in the past, to support this amendment and to give this decision back to the American people.

AMENDMENTS SUBMITTED AND PROPOSED

SA 466. Ms. COLLINS (for herself, Mr. LAUTENBERG, Mr. MENENDEZ, and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table.

SA 467. Ms. AYOTTE (for herself, Ms. SNOWE, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by her to the bill S. 782, supra; which was ordered to lie on the table.

SA 468. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 782, supra; which was ordered to lie on the table.

SA 469. Mr. BROWN of Ohio submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 470. Mr. BROWN of Ohio (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 471. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 466. Ms. COLLINS (for herself, Mr. LAUTENBERG, Mr. MENENDEZ, and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, line 19, before ''and'' insert ''military base closures or realignments,''.

SA 467. Ms. AYOTTE (for herself, Ms. SNOWE, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by her to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, insert the following:

SEC. 22. FIDUCIARY EXCLUSION.

Section 3(21)(A) of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002(21)(A)) is amended by inserting ''and except to the extent a person is providing an appraisal or fairness opinion with respect to qualifying employer securities (as defined in section 407(d)(5)) included in an employee stock ownership plan (as defined in section 407(d)(6)),'' after ''subparagraph (B),''.

SA 468. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. REPEAL OF CERTAIN LIMITATIONS ON HEALTH CARE BENEFITS.

(a) REPEAL OF DISTRIBUTIONS FOR MEDICINE QUALIFIED ONLY IF FOR PRESCRIBED DRUG OR INSULIN.—Section 9003 of the Patient Protection and Affordable Care Act (Public Law 111–148) and the amendments made by such section are repealed; and the Internal Revenue Code of 1986 shall be applied as if such section, and amendments, had never been enacted.

(b) REPEAL OF LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.—Sections 9005 and 10902 of the Patient Protection and Affordable Care Act (Public Law 111–148) and section 1403 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152) and the amendments made by such sections are repealed.

SA 469. Mr. BROWN of Ohio submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, strike lines 9 through 13 and insert the following:

''(ii) reduce the dependence of the United States on foreign oil;

''(iii) encourage efficient coordination and leveraging of public and private investments; and

''(iv) encourage development of manufacturing capability within the region.''; and

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SA 470. Mr. BROWN of Ohio (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 12, between lines 11 and 12, insert the following:

SEC. 10. BUSINESS INCUBATORS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 is amended by inserting after section 207 (42 U.S.C. 3147) the following:

''SEC. 208. BUSINESS INCUBATORS.

''(a) DEFINITION OF BUSINESS INCUBATOR.—

''(1) IN GENERAL.—In this section, the term 'business incubator' means an organization