

Whereas, using the seldom-used method commonly known as Private Relief Legislation, the Congress can act swiftly to allow Wojtek Tokarczyk to re-enter the United States of America, and be legally adopted by his aunt and uncle, Walter and Teresa Tokarczyk; and

Whereas, Wojtek Tokarczyk has become a boy without a country. This is not an instance where the Immigration and Naturalization Service has acted to protect the resources of this nation from an undesirable illegal alien. He is missed dearly by his family, his soccer teammates and friends, and the community at large. Wojtek is also missed by the local fire department where he served as a volunteer firefighter. This is a matter of family values and a sense of community. The prompt return of Wojtek Tokarczyk would be one small victory for the American notion that families are our most important resource and that close-knit communities still exist, now, therefore, be it

Resolved by the Senate, That we memorialize the President of the United States and the Congress of the United States to take immediate and necessary action to provide for United States citizenship for Wojtek Tokarczyk; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States of America, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the Immigration and Naturalization Service.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 927. A bill to amend title 28, United States Code, to provide for appointment of United States marshals by the Attorney General.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Garr M. King, of Oregon, to be United States District Judge for the District of Oregon.

Kermit Lipez, of Maine, to be United States Circuit Judge for the First Circuit.

Robert T. Dawson, of Arkansas, to be United States District Judge for the Western District of Arkansas.

Johnnie B. Rawlinson, of Nevada, to be United States District Judge for the District of Nevada.

Gregory Moneta Sleet, of Delaware, to be United States District Judge for the District of Delaware.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

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

S. 1864. A bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the medicare skilled nursing facility prospective

payment system; to the Committee on Finance.

By Mr. BAUCUS:

S. 1865. A bill to amend title IV of the Social Security Act to provide safeguards against the abuse of information reported to the National Directory of New Hires; to the Committee on Finance.

By Mr. DEWINE:

S. 1866. A bill to provide assistance to improve research regarding the quality and effectiveness of health care for children, to improve data collection regarding children's health, and to improve the effectiveness of health care delivery systems for children; to the Committee on Labor and Human Resources.

By Ms. COLLINS:

S. 1867. A bill to amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, and to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses; to the Committee on Governmental Affairs.

By Mr. NICKLES (for himself, Mr. MACK, Mr. LIEBERMAN, Mr. KEMPTHORNE, Mr. CRAIG, Mr. HUTCHINSON,

and Mr. DEWINE):

S. 1868. A bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes; to the Committee on Foreign Relations.

By Mr. CLELAND (for himself, Mr. COVERDELL, Mr. KERRY, Mr. HOLLINGS, and Mr. HARKIN):

S. 1869. A bill to authorize the establishment of a disaster mitigation pilot program in the Small Business Administration; to the Committee on Small Business.

By Mr. CAMPBELL:

S. 1870. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 1871. A bill to provide that the exception for certain real estate investment trusts from the treatment of stapled entities shall apply only to existing property, and for other purposes; to the Committee on Finance.

By Mr. NICKLES:

S. 1872. A bill to prohibit new welfare for politicians; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. INOUE:

S. Res. 200. A resolution designating March 26, 1998, as "National Maritime Arbitration Day"; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 1864. A bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the Medicare skilled

nursing facility prospective payment system; to the Committee on Finance.

THE MEDICARE SOCIAL WORK EQUITY ACT OF 1998

Ms. MIKULSKI. Mr. President, I rise today to introduce the "Medicare Social Work Equity Act of 1998". I am proud to sponsor this legislation which will amend section 4432 in the Balanced Budget Act of 1997 which prevents social workers from directly billing Medicare for mental health services provided in skilled nursing facilities. I am honored to be joined by my good friends Senator MURRAY and Senator WYDEN who care equally about correcting this inequity for social workers.

Last year's Balanced Budget Act changed the payment method for skilled nursing facility care. Under current law, reimbursement is made after services have been delivered for the reasonable costs incurred. However, this "cost-based system" was blamed for inordinate growth in Medicare spending at skilled nursing facilities.

The Balanced Budget Act of 1997 phases in a prospective payment system for skilled nursing facilities beginning July 1, 1998. Payments for Part B services for skilled nursing facility residents will be consolidated. This means that the provider of the services must bill the facility instead of directly billing Medicare.

Congress was careful to not include psychologists and psychiatrists in this new consolidated billing provision. Social workers were included, I think by mistake. Clinical social workers are the primary providers of mental health services to residents of nursing homes, particularly in underserved urban and rural areas. Clinical social workers are also the most cost effective mental health providers.

This legislation is important for three reasons: First, I am concerned that section 4432 will inadvertently reduce mental health services to nursing home residents. Second, I believe that the new consolidated billing requirement will result in a shift from using social workers to other mental health professionals who are reimbursed at a higher cost. This will result in higher costs to Medicare. Finally, I am concerned that clinical social workers will lose their jobs in nursing homes or will be inadequately reimbursed.

I like this bill because it will correct an inequity for America's social workers, it will assure quality of care for nursing home residents, and will assure cost efficiency for Medicare. I look forward to the Senate's support of this worthy legislation.

By Mr. BAUCUS:

S. 1865. A bill to amend title IV of the Social Security Act to provide safeguards against the abuse of information reported to the National Directory of New Hires; to the Committee on Finance.

THE SAFEGUARD OF NEW EMPLOYEE
INFORMATION ACT OF 1998

Mr. BAUCUS. Mr. President, today I am introducing the Safeguard of New Employee Information Act of 1998. This bill will ensure that the mechanisms created in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to enhance our child support enforcement system will not lead to a misuse of personal information. I believe that my bill will assure that new employee information is kept confidential without compromising the usefulness of the National Directory of New Hires. The legislation provides clear safeguards against the abuse of personal employee information, and makes sure that the information is erased two years after entry.

As we all know, child support is a critical part of welfare reform. I strongly support the measures in PRWORA that help states track and crack down on parents who fail to pay court-ordered child support. In response to the fact that over 30 percent of child support cases involve parents who do not live in the same state as their children, a National Directory of New Hires was created to assist states in locating parents who reside in other states.

Thus far, the new data base has been very successful in enabling states to locate delinquent parents, enforcing payment orders and reducing the number of welfare families. However, many folks are concerned about the confidentiality of the registry, and the fact that this information is never deleted.

Last year, for example, the Montana State Legislature passed a child support bill to comply with the new federal regulations. I must add, this bill was passed in the final hours of the legislative session and under the threat of losing \$52 million a year in federal funds. At that time, the legislature was hesitant to pass the bill because of concerns regarding confidentiality.

Mr. President, the Safeguard of New Employee Information Act of 1998 makes needed changes to the National Directory to alleviate these fears and ensure the registry's continuation. The bill provides penalties for misuse of information by federal employees. Specifically, it establishes a fine of \$1,000 for each act of unauthorized access to, disclosure, or use of information in the National Directory of New Hires.

The bill also establishes a 24-month limit on retention of New Hire data. This two year limit gives Child Support Enforcement agencies the necessary time to determine paternity, establish a child support order or enforce existing orders. A shorter period of data retention would impede enforcement activities, and a longer period of retention increases the potential for abuse.

Mr. President, in my state of Montana, 90 percent of families on welfare are headed by single parents. That is why it is so important to require that the absent mothers or fathers provide

money to feed, clothe and care for their children. The National Directory of New Hires is a good idea—we just need to ensure new employee confidentiality. I urge my colleagues to protect new hire confidentiality and support this important legislation.

By Mr. DEWINE:

S. 1866. A bill to provide assistance to improve research regarding the quality and effectiveness of health care for children, to improve data collection regarding children's health, and to improve the effectiveness of health care delivery systems for children; to the Committee on Labor and Human Resources.

THE CHILD HEALTH CARE QUALITY RESEARCH
IMPROVEMENT ACT

Mr. DEWINE. Mr. President, I rise today to introduce the Child Health Care Quality Research Improvement Act. We have been hearing a great deal recently about the quality of health care in this country. Most of the debate, both here in Congress and back home in our States, has been driven, at least in part, by a fear among consumers that efforts to control costs and move people into managed care has compromised quality. This fear has driven legislation such as the bill we passed just last year to provide for 48-hour maternity stays. This year a whole host of health care quality bills have been introduced in the Congress. Even more such legislation has been moving forward at the State level as well.

As I have learned more and more about the concerns about the quality of health care, I have tried to focus particular attention on children, how their health care is delivered and whether its quality has been compromised. Frankly, I have learned something that I find very interesting.

While the drive to improve quality and reduce cost has driven a great deal of new research over the past several years, relatively little has been done for children in this area. While we are getting better at measuring quality of health care for adults, we have made little such progress for our children.

Between 1993 and 1995, only some 5 percent of the health services research study outcomes focused on our children. This is highly alarming because I frankly cannot think of anything more critical to our Nation's future than the quality of our children's health. Clearly we need to correct this serious lack of good health care quality measures.

I have spoken with experts in the field of pediatric research and they agree with this assessment. They tell me that we have to do more in this field if we expect to improve the care that our children receive. Many times, frankly, we don't know exactly which treatments are cost effective or best improve a child's quality of life. We don't know how to manage children's complicated health problems in ways that will allow them to lead normal lives

We can answer many of these questions if the patient is an adult, but we have far fewer answers for our children. Here is one example. One study recently found that children have three times greater chance of dying after heart surgery at some hospitals than they have at other hospitals—three times. We must fix this. That means we have to find out why, why one hospital loses three times as many children as another. As both a parent and a grandparent, I can speak from firsthand experience about the stress and the uncertainty that goes along with any childhood illness. To think that a parent's choice of a hospital could actually be harmful to a child is certainly a very scary thought for a parent.

Another example is asthma. Asthma is the most common chronic health condition in children, affecting 5 million children in this country, and that percentage, tragically, is rising. We are not sure why this has been happening, but we do know that the quality of health care a child receives can dramatically affect the severity of his or her asthma. As a result, the better the quality of health care, the less time that child spends in the hospital, the fewer visits to the emergency room, and the less time a child has to miss from school. If we do not even know what kinds of treatment work best for children or that different treatments work better in different environments, we cannot help. We certainly can't begin to debate how to improve quality if we can't even define it or measure it. For that, we need to conduct research in real world settings.

As a means of getting this research into real world settings and improving the quality of health care that our children receive, I am introducing a bill today entitled the Child Health Care Quality Research Improvement Act. This legislation was developed with the help of leaders in the pediatric community, child advocates, and health services researchers. My bill takes a three-pronged approach to address this issue: One, focusing on training; two, research; and three, data collection for child health outcomes and effectiveness research.

Let me start with the first one.

In order for us to make advances in the study of pediatric health outcomes, it is essential that we have researchers who have received training in this field. This bill I am introducing today promotes research training programs in child health services research at the doctoral, post-doctoral, and junior faculty levels. By bringing professionals into this very important field, we can ensure that issues that affect the lives of children are receiving the attention they deserve.

The second component of this bill establishes research centers and networks. The goal of the centers and networks will be to foster collaboration among experts in the field of pediatric health care quality and effectiveness.

We envision that these centers and networks will bring together pediatric specialists from children's hospitals, physicians in managed care plans, statisticians from schools of public health, and other experts in the field to work together on research projects and to translate these findings into real-world settings where children are receiving health care.

Third, and finally, this legislation contains a component that adds supplements to existing national health surveys that are today administered by the National Center for Health Statistics and the Maternal and Child Health Bureau. In addition to not knowing how to measure health care quality in children, other data, like that measuring children's use of health care systems and health care expenditures, are lacking. Adding supplements to existing surveys is a very sensible measure. This bill does not require yet another survey to be administered. Rather, it simply adds questions to existing surveys, to allow us to collect valuable data on children. This is the type of information that we need if we want to look at trends in children's health and what we can do to improve their health.

Mr. President, we are all well aware that children have medical conditions and health care needs that are different from those of adults. It doesn't make sense to do health services research for adults and hope that one size fits all—that the things we learn will make sense for children. Federal support for child health quality and effectiveness research is vital to ensure that children are receiving appropriate health care. We owe it to our Nation's children to train health professionals in this important field, and to support these very important research initiatives.

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

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

S. 1866

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 "Child Health Care Quality Research Improvement Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) There is increased emphasis on using evidence of improved health care outcomes and cost effectiveness to justify changes in our health care system.

(2) There is a growing movement to use health care quality measures to ensure that health care services provided are appropriate and likely to improve health.

(3) Few health care quality measures exist for children, especially for the treatment of acute and chronic conditions.

(4) A significant number of children in the United States have health problems, and the percentage of children with special health care needs is increasing.

(5) Children in the health care marketplace have unique health attributes, including a

child's developmental vulnerability, differential morbidity, and dependency on adults, families, and communities.

(6) Children account for less than 15 percent of the national health care spending, and do not command a large amount of influence in the health care marketplace.

(7) The Federal government is the major payer of children's health care in the United States.

(8) Numerous scientifically sound measures exist for assessing quality of health care for adults, and similar measures should be developed for assessing the quality of health care for children.

(9) The delivery structures and systems that provide care for children are necessarily different than systems caring for adults, and therefore require appropriate types of quality measurements and improvement systems.

(10) Improving quality measurement and monitoring will—

(A) assist health care providers in identifying ways to improve health outcomes for common and rare childhood health conditions;

(B) assist consumers and purchasers of health care in determining the value of the health care products and services they are receiving or buying; and

(C) assist providers in selecting effective treatments and priorities for service delivery.

(11) Because of the prevalence and patterns of children's medical conditions, research on improving care for relatively rare or specific conditions must be conducted across multiple institutions and practice settings in order to guarantee the validity and generalizability of research results.

SEC. 3. DEFINITIONS.

In this Act:

(1) HIGH PRIORITY AREAS.—the term "high priority areas" means areas of research that are of compelling scientific or public policy significance, that include high priority areas of research identified by the Conference on Improving Quality of Health Care for Children: An Agenda for Research (May, 1997), and that—

(A) are consistent with areas of research as defined in paragraphs (1)(A) and (2) of section 1142(a) of the Social Security Act;

(B) are relevant to all children or to specific subgroups of children; or

(C) are consistent with such other criteria as the Secretary may require.

(2) LOCAL COMMUNITY.—The term "local community" means city, county, and regional governments, and research institutes in conjunction with such cities, counties, or regional governments.

(3) PEDIATRIC QUALITY OF CARE AND OUTCOMES RESEARCH.—The term "pediatric quality of care and outcomes research" means research involving the process of health care delivery and the outcomes of that delivery in order to improve the care available for children, including health promotion and disease prevention, diagnosis, treatment, and rehabilitation services, including research to—

(A) develop and use better measures of health and functional status in order to determine more precisely baseline health status and health outcomes;

(B) evaluate the results of the health care process in real-life settings, including variations in medical practices and patterns, as well as functional status, clinical status, and patient satisfaction;

(C) develop quality improvement tools and evaluate their implementation in order to establish benchmarks for care for specific childhood diseases, conditions, impairments, or populations groups;

(D) develop specific measures of the quality of care to determine whether a specific

health service has been provided in a technically appropriate and effective manner, that is responsive to the clinical needs of the patient, and that is evaluated in terms of the clinical and functional status of the patient as well as the patient's satisfaction with the care; or

(E) assess policies, procedures, and methods that can be used to improve the process and outcomes of the delivery of care.

(4) PROVIDER-BASED RESEARCH NETWORKS.—The term "provider-based research network" refers to 1 of the following which exist for the purpose of conducting research:

(A) A hospital-based research network that is comprised of a sufficient number of children's hospitals or pediatric departments of academic health centers.

(B) A physician practice-based research network that is comprised of a sufficient number of groups of physicians practices.

(C) A managed care-based research network that is comprised of a sufficient number of pediatric programs of State-licensed health maintenance organizations or other State certified managed care plans.

(D) A combination provider-based research network that is comprised of all or part of a hospital-based research network, a physician practice-based research network, and a managed care-based research network.

(5) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 4. EXPANSION OF THE HEALTH SERVICES RESEARCH WORKFORCE.

(a) GRANTS.—The Secretary shall annually award not less than 10 grants to eligible entities at geographically diverse locations throughout the United States to enable such entities to carry out research training programs that are dedicated to child health services research training initiatives at the doctoral, post-doctoral, and junior faculty levels.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a public or nonprofit private entity; and

(2) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.

(c) LIMITATION.—A grant awarded under this section shall be for an amount that does not exceed \$500,000.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$5,000,000 for each of the fiscal years 1999 through 2003.

SEC. 5. DEVELOPMENT OF CHILD HEALTH IMPROVEMENT RESEARCH CENTERS AND PROVIDER-BASED RESEARCH NETWORKS.

(a) GRANTS.—In order to address the full continuum of pediatric quality of care and outcomes research, to link research to practice improvement, and to speed the dissemination of research findings to community practice settings, the Secretary shall award grants to eligible entities for the establishment of—

(1) not less than 10 national centers for excellence in child health improvement research at geographically diverse locations throughout the United States; and

(2) not less than 5 national child health provider quality improvement research networks at geographically diverse locations throughout the United States, including at least 1 of each type of network as described in section 3(4).

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) for purposes of—

(A) subsection (a)(1), be a public or nonprofit entity, or group of entities, including universities, and where applicable their

schools of Public Health, research institutions, or children's hospitals, with multi-disciplinary expertise including pediatric quality of care and outcomes research and primary care research; or

(B) subsection (a)(2), be a public or non-profit institution that represents children's hospitals, pediatric departments of academic health centers, physician practices, or managed care plans; and

(2) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) in the case of an application for a grant under subsection (a)(1), a demonstration that a research center will conduct 2 or more research projects involving pediatric quality of care and outcomes research in high priority areas; or

(B) in the case of an application for a grant under subsection (a)(2)—

(i) a demonstration that the applicant and its network will conduct 2 or more projects involving pediatric quality of care and outcomes research in high priority areas;

(ii) a demonstration of an effective and cost-efficient data collection infrastructure;

(iii) a demonstration of matching funds equal to the amount of the grant; and

(iv) a plan for sustaining the financing of the operation of a provider-based network after the expiration of the 5-year term of the grant.

(c) LIMITATIONS.—A grant awarded under subsection (a)(1) shall not exceed \$1,000,000 per year and be for a term of more than 5 years and a grant awarded under subsection (a)(2) shall not exceed \$750,000 per year and be for a term of more than 5 years.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to carry out subsection (a)(1), \$10,000,000 for each of the fiscal years 1999 through 2003; and

(2) to carry out subsection (a)(2), \$3,750,000 for each of the fiscal years 1999 through 2003.

SEC. 6. RESEARCH IN SPECIFIC HIGH PRIORITY AREAS.

(a) ADDITIONAL FUNDS FOR GRANTS.—From amounts appropriated under subsection (c), the Secretary shall provide support, through grant programs authorized on the date of enactment of this Act, to entities determined to have expertise in pediatric quality of care and outcomes research. Such additional funds shall be used to improve the quality of children's health, especially in high priority areas, and shall be subject to the same conditions and requirements that apply to funds provided under the existing grant program through which such additional funds are provided.

(b) ADVISORY COMMITTEE.—

(1) IN GENERAL.—To evaluate progress made in pediatric quality of care and outcomes research in high priority areas, and to identify new high priority areas, the Secretary shall establish an advisory committee which shall report annually to the Secretary.

(2) MEMBERSHIP.—The Secretary shall ensure that the advisory committee established under paragraph (1) includes individuals who are—

(A) health care consumers;

(B) health care providers;

(C) purchasers of health care;

(D) representative of health plans involved in children's health care services; and

(E) representatives of Federal agencies including—

(i) the Agency for Health Care Policy and Research;

(ii) the Centers for Disease Control and Prevention;

(iii) the Health Care Financing Administration;

(iv) the Maternal and Child Health Bureau;

(v) the National Institutes of Health; and

(vi) the Substance Abuse and Mental Health Services Administration.

(3) EVALUATION OF RESEARCH.—The advisory committee established under paragraph (1) shall evaluate research in high priority areas using criteria that include—

(1) the generation of research that includes both short and long term studies;

(2) the ability to foster public and private partnerships; and

(3) the likelihood that findings will be transmitted rapidly into practice.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$12,000,000 for each of the fiscal years 1999 through 2003.

SEC. 7. IMPROVING CHILD HEALTH DATA AND DEVELOPING BETTER DATA COLLECTION SYSTEMS.

(a) SURVEY.—The Secretary shall provide assistance to enable the appropriate Federal agencies to—

(1) conduct ongoing biennial supplements and initiate and maintain a longitudinal study on children's health that is linked to the appropriate existing national surveys (including the National Health Interview Survey and the Medical Expenditure Panel Survey) to—

(A) provide for reliable national estimates of health care expenditures, cost, use, access, and satisfaction for children, including uninsured children, poor and near-poor children, and children with special health care needs;

(B) enhance the understanding of the determinants of health outcomes and functional status among children with special health care needs, as well as an understanding of these changes over time and their relationship to health care access and use; and

(C) monitor the overall national impact of Federal and State policy changes on children's health care; and

(2) develop an ongoing 50-State survey to generate reliable State estimates of health care expenditures, cost, use, access, satisfaction, and quality for children, including uninsured children, poor and near-poor children, and children with special health care needs.

(b) GRANTS.—The Secretary shall award grants to public and nonprofit entities to enable such entities to develop the capacity of local communities to improve child health monitoring at the community level.

(c) ELIGIBILITY.—To be eligible to receive a grant under subsection (b), an entity shall—

(1) be a public or nonprofit entity; and

(2) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$14,000,000 for each of the fiscal years 1999 through 2003, of which—

(1) \$6,000,000 shall be made available in each fiscal year for grants under subsection (a)(1);

(2) \$4,000,000 shall be made available in each fiscal year for grants under subsection (a)(2);

(3) \$4,000,000 shall be made available in each fiscal year for grants under subsection (b).

SEC. 8. OVERSIGHT.

Not later than _____ after the date of enactment of this Act, The Secretary shall prepare and submit a report to Congress on progress made in pediatric quality of care and outcomes research, including the extent of ongoing research, programs, and technical needs, and the Department of Health and Human Services' priorities for funding pediatric quality of care and outcomes research.

By Ms. COLLINS:

S. 1867. A bill to amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, and to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses; to the Committee on Governmental Affairs.

THE SMALL BUSINESS PAPERWORK REDUCTION ACT

Ms. COLLINS. Mr. President, today I am introducing the Small Business Paperwork Reduction Act Amendments of 1998, a companion bill to legislation pending in the House of Representatives.

This legislation has five components. First, it requires the Office of Management and Budget to publish annually in the Federal Register and on the Internet all of the Federal paperwork requirements imposed on small business. This will not only serve as a valuable tool for those who must comply with these mandates, but it will also make it far easier for policy makers to monitor, and I would hope check, the growth in the paperwork burden.

Second, under the bill, each agency will have to establish one point of contact to act as a liaison with small businesses on paperwork requirements. In an era when serving the customer has become recognized by the private sector as critical, this is a modest step to ask of our government.

Third, the legislation provides for the suspension of civil fines imposed on small enterprises for first-time paperwork violations, except under certain circumstances, such as when the violation causes serious harm to the public or presents an imminent danger to the public health or safety. In dealing with America's entrepreneurs, we need to move away from a culture that seems to place a higher priority on imposing punishment than on facilitating compliance.

Fourth, in addition to meeting the mandates of the Paperwork Reduction Act, agencies will have to make further efforts to reduce the burden on enterprises with fewer than 25 employees. There must be some measure of proportionality between the size of a business and its costs of complying with government regulation.

Fifth, a task force will be established to examine the feasibility of requiring agencies to consolidate their paperwork mandates in a manner that will allow small businesses to satisfy those mandates through a single filing, in a single format, and on the same date. By reducing the amount of time currently devoted to these tasks, our companies will have more to spend on the activities for which they were formed.

Mr. President, all too often the relationship between the owners of small businesses and government is an adversarial one. That benefits no one—not the owners of these enterprises, not the many Americans they employ, not

the government they help to support, and not the public at large.

The problem often is not with the goals which underlie our regulations, but rather in how we seek to achieve those goals. We should not forget that we are dealing with Americans who make a great contribution to the prosperity of our nation. In seeking to meet our regulatory objectives, we should be reaching out to these entrepreneurs with a helping hand and not a heavy hand. That, Mr. President, is the purpose of this legislation.

By Mr. NICKLES (for himself, Mr. MACK, Mr. LIEBERMAN, Mr. KEMPTHORNE, Mr. CRAIG, Mr. HUTCHINSON, and Mr. DEWINE):

S. 1868. A bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes; to the Committee on Foreign Relations.

THE INTERNATIONAL RELIGIOUS FREEDOM ACT
OF 1998

Mr. NICKLES. Mr. President, today I am prompted to speak by both a tragic reality, and also what I would think is a promising hope. The tragic reality is that literally millions of religious believers around the world live gripped by the incessant, terrifying prospect of persecution, of being tortured, arrested, imprisoned or even killed for simply practicing their faith. A promising hope, I believe, might perhaps be found in the bill that I am introducing today with Senator LIEBERMAN, Senator MACK, Senator KEMPTHORNE, Senator CRAIG, Senator HUTCHINSON and Senator DEWINE. It is called the International Religious Freedom Act. The International Religious Freedom Act will establish a process to ensure that on an ongoing basis the United States closely monitors religious persecution worldwide.

It is wrong for a country to persecute, to prosecute, to imprison, harass individuals for simply practicing their faith, whether that faith is Jewish or Christian or Muslim or Hindu. It is absolutely wrong for them to be persecuted for practicing their faith. This act requires the U.S. Government to take action against all countries engaging in religious persecution.

What kind of persecution am I talking about? First, three facts command attention.

One reliable estimate indicates that more Christian martyrs have perished in this century than all previous centuries combined. That is a staggering, staggering statement.

A recent book reports that 200 million Christians around the world live under daily fear and threat of persecution, including interrogation, imprisonment, torture and in some cases death.

Finally, over half the world's population lives under regimes which severely restrict if not prohibit their ability to believe in and practice the religious faith of their choice and conviction.

Of course, religious persecution goes beyond facts and figures. It happens to real people in real places. Let me point out just four compelling examples.

At this very moment one of China's leading house church pastors, Pastor Peter Xu, is languishing in a Chinese prison under a 3-year term for the so-called "crime" of "disturbing public order." Hundreds, perhaps thousands of other believers in China currently suffer similar treatment.

Again, at this very moment, 13 courageous Christians are imprisoned by the Communist authorities in Laos. What was their "crime"? Simply that they organized an "unauthorized" Bible study in the privacy of a home.

In Pakistan, just a few months ago, Pastor Noor Alam was brutally stabbed to death by anti-Christian assailants. Shortly before that, they had destroyed Pastor Alam's church building. Meanwhile, Christians and other religious minorities in Pakistan continue to suffer under the notorious "blasphemy laws."

Or consider Russia, which, as many of my colleagues will remember, just last summer passed a draconian law that will effectively shut down the vast majority of independent churches and other religious organizations and severely curtail the religious freedom of the Russian people.

I could go on and on. However, I do want to share just a few highlights of what we humbly but earnestly hope our bill can do to begin to address the scourge of religious persecution worldwide.

I should also mention that, in 1996, I was honored to sponsor a Senate resolution on religious persecution, which passed by unanimous consent. In that resolution, the Senate made a strong recommendation "that the President expand and invigorate the United States' international advocacy on behalf of persecuted Christians, and initiate a thorough examination of all United States' policies that affect persecuted Christians."

What was a mere resolution in 1996, I hope it will become a reality in 1998. While then we acted with words, I hope that this year we can act with deeds.

In short, this bill seeks to ensure that the U.S. Government aggressively monitors religious oppression around the world and takes decisive action against those regimes engaged in persecution, all the while maintaining the integrity and credibility of the U.S. foreign policy system.

The International Religious Freedom Act establishes an "Ambassador-at-

Large for Religious Liberty" at the State Department. The Ambassador will be responsible for representing our Government in vigorous diplomacy with nations guilty of religious persecution. In addition, the Ambassador will oversee an annual report on religious persecution which will specify the details on religious persecution around the world. This report will name names. And those countries named will be held accountable.

For any country cited in the report, the Act presents a menu of diplomatic and economic options, and the President is required to select from at least one of those actions. Silence or passivity are not options. At the same time, the Act seeks to provide the President maximum flexibility entailing the most appropriate, effective response to that particular situation in a particular country. Furthermore, because we desire good results to follow our good intentions, the Act requires a consideration of how the action taken by America will affect American economic and security interests and, most important, how it will affect the very people that it purports to help.

The International Religious Freedom Act has other provisions—improved reporting, improved training for immigration and foreign service officials, a commission on international religious liberty to provide more attention and expertise on the issue. I invite all my colleagues, and certainly those who are deeply concerned about the plight of persecuted religious believers, to join me in supporting this bill. Not because it might be popular or expedient or convenient to support this legislation, but because it is the right thing to do and because I believe it will make a real difference in protecting the lives of some of the most vulnerable people in the world, those people who wish to express their religious beliefs and convictions.

Mr. President, I thank my cosponsors, particularly Senator LIEBERMAN, also Senator MACK, in addition to Senator HUTCHINSON and Senator CRAIG and Senator KEMPTHORNE, for helping us put this legislation together.

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

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

S. 1868

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "International Religious Freedom Act of 1998".

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; policy.
- Sec. 3. Definitions.

**TITLE I—DEPARTMENT OF STATE
ACTIVITIES**

- Sec. 101. Office on International Religious Freedom; Ambassador at Large for International Religious Freedom.

- Sec. 102. Reports.
- Sec. 103. Establishment of a religious freedom Internet site.
- Sec. 104. Training for Foreign Service officers.
- Sec. 105. High-level contacts with NGOs.
- Sec. 106. Programs and allocations of funds by United States missions abroad.
- Sec. 107. Equal access to United States missions abroad for conducting religious activities.
- Sec. 108. Prisoner lists and issue briefs on religious persecution concerns.

TITLE II—COMMISSION ON INTERNATIONAL RELIGIOUS PERSECUTION

- Sec. 201. Establishment and composition.
- Sec. 202. Duties of the Commission.
- Sec. 203. Report of the Commission.
- Sec. 204. Termination.

TITLE III—NATIONAL SECURITY COUNCIL

- Sec. 301. Special Adviser on Religious Persecution.

TITLE IV—SANCTIONS

Subtitle I—Targeted Responses to Religious Persecution Abroad

- Sec. 401. Executive measures and sanctions in response to findings made in the Annual Report on Religious Persecution.
- Sec. 402. Presidential determinations of gross violations of the right to religious freedom.
- Sec. 403. Consultations.
- Sec. 404. Report to Congress.
- Sec. 405. Description of Executive measures and sanctions.
- Sec. 406. Contract sanctity.
- Sec. 407. Presidential waiver.
- Sec. 408. Publication in Federal Register.
- Sec. 409. Congressional review.
- Sec. 410. Termination of sanctions.

Subtitle II—Strengthening Existing Law

- Sec. 421. United States assistance.
- Sec. 422. Multilateral assistance.
- Sec. 423. Exports of items relating to religious persecution.

TITLE V—PROMOTION OF RELIGIOUS FREEDOM

- Sec. 501. Assistance for promoting religious freedom.
- Sec. 502. International broadcasting.
- Sec. 503. International exchanges.
- Sec. 504. Foreign Service awards.

TITLE VI—REFUGEE, ASYLUM, AND CONSULAR MATTERS

- Sec. 601. Use of Annual Report.
- Sec. 602. Reform of refugee policy.
- Sec. 603. Reform of asylum policy.
- Sec. 604. Inadmissibility of foreign government officials who have engaged in gross violations of the right to religious freedom.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Business codes of conduct.
- Sec. 702. International Criminal Court.

SEC. 2. FINDINGS; POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Freedom of religious belief and practice is a fundamental human right articulated in numerous international agreements and covenants, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(2) The right to freedom of religion undergirds the very origin and existence of

the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

(3) Article 18 of the Universal Declaration of Human Rights recognizes that "Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance." Article 18(1) of the International Covenant on Civil and Political Rights recognizes that "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching". Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, country, creed, or nationality, and should never be arbitrarily abridged by any government.

(4) The right to freedom of religion is under renewed and, in some cases, increasing assault in many countries around the world. More than one-half of the world's population lives under regimes that severely restrict or prohibit the freedom of their citizens to study, believe, observe, and freely practice the religious faith of their choice. Religious believers and communities suffer both government-sponsored and government-tolerated violations of their rights to religious freedom. Among the many forms of such violations are state-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of "religious police", severe prohibitions against construction and repair of places of worship, denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, and prohibitions against publishing, distributing, or possessing religious literature and materials.

(5) Even more abhorrent, religious believers in many countries face such severe and violent forms of religious persecution as detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of or practice of their faith. In many countries, religious believers are forced to meet secretly, and religious leaders are targeted by national security forces and hostile mobs.

(6) Though not confined to a particular region or regime, religious persecution is often particularly widespread, systematic, and heinous under totalitarian governments and in countries with militant, politicized religious majorities.

(7) Congress has recognized and denounced acts of religious persecution through the adoption of the following resolutions:

(A) House Resolution 515 (104th), expressing the sense of the House of Representatives with respect to the persecution of Christians worldwide.

(B) Senate Concurrent Resolution 71 (104th), expressing the sense of the Senate regarding persecution of Christians worldwide.

(C) House Concurrent Resolution 102, concerning the emancipation of the Iranian Baha'i community.

(b) POLICY.—It shall be the policy of the United States, as follows:

(1) To condemn religious persecution, and to promote, and to assist other governments in the promotion of, the fundamental right to religious freedom.

(2) To seek to channel United States security and development assistance to governments other than those found to be engaged in gross violations of human rights, including the right to religious freedom, as set forth in the Foreign Assistance Act of 1961, in the International Financial Institutions Act of 1977, and in other formulations of United States human rights policy.

(3) To be vigorous and flexible, reflecting both the unwavering commitment of the United States to religious freedom and the desire of the United States for the most effective and principled response, in light of the range of violations of religious freedom by a variety of persecuting regimes, and the status of the relations of the United States with different nations.

(4) To work with foreign governments that affirm and protect religious freedom, in order to develop multilateral documents and initiatives to combat religious persecution and promote the right to religious freedom abroad.

(5) Standing for liberty and standing with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational, and cultural channels, to promote respect for religious freedom by all governments and peoples.

SEC. 3. DEFINITIONS.

In this Act:

(1) AMBASSADOR AT LARGE.—The term "Ambassador at Large" means the Ambassador at Large on International Religious Freedom appointed under section 101(b).

(2) ANNUAL REPORT ON RELIGIOUS PERSECUTION.—The term "Annual Report on Religious Persecution" means the report described in section 102(b).

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives and, in the case of any determination made with respect to the imposition of a sanction under paragraphs (9) through (16) of section 405, the term "appropriate congressional committees" includes those committees, together with the Committee on Ways and Means and the Committee on Banking and Financial Services of the House of Representatives and the Committee on Finance of the Senate.

(4) COMMISSION.—The term "Commission" means the United States Commission on International Religious Persecution established in section 201(a).

(5) GOVERNMENT OR FOREIGN GOVERNMENT.—The term "government" or "foreign government" includes any agency or instrumentality of the government.

(6) GROSS VIOLATIONS OF THE RIGHT TO FREEDOM OF RELIGION.—The term "gross violations of the right to freedom of religion" means a consistent pattern of gross violations of the right to freedom of religion that include torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction or clandestine detention of those persons, or other flagrant denial of the right to life, liberty, or the security of persons, within the meaning of section 116(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(a)).

(7) HUMAN RIGHTS REPORTS.—The term “Human Rights Reports” means the reports submitted by the Department of State to Congress under sections 116 and 502B of the Foreign Assistance Act of 1961.

(8) OFFICE.—The term “Office” means the Office on International Religious Freedom established in section 101(a).

(9) RELIGIOUS PERSECUTION.—The term “religious persecution” means any violation of the internationally recognized right to freedom of religion, as defined in Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights, including violations such as—

(A) arbitrary prohibitions on, restrictions of, or punishment for—

(i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements,

(ii) speaking freely about one’s religious beliefs,

(iii) changing one’s religious beliefs and affiliation,

(iv) possession and distribution of religious literature, including Bibles, or

(v) raising one’s children in the religious teachings and practices of one’s choice,

as well as arbitrary prohibitions or restrictions on the grounds of religion on holding public office, or pursuing educational or professional opportunities; and

(B) any of the following acts if committed on account of an individual’s religious belief or practice: detention, interrogation, harassment, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, beating, torture, mutilation, rape, enslavement, murder, and execution.

(10) SPECIAL ADVISER.—The term “Special Adviser” means the Special Adviser to the President on Religious Persecution established in section 101(i) of the National Security Act of 1947, as added by section 301 of this Act.

TITLE I—DEPARTMENT OF STATE ACTIVITIES

SEC. 101. OFFICE ON INTERNATIONAL RELIGIOUS FREEDOM; AMBASSADOR AT LARGE FOR INTERNATIONAL RELIGIOUS FREEDOM.

(a) ESTABLISHMENT OF OFFICE.—There is established within the Department of State an Office on International Religious Freedom that shall be headed by the Ambassador at Large on International Religious Freedom appointed under subsection (b).

(b) APPOINTMENT.—The Ambassador at Large shall be appointed by the President, by and with the advice and consent of the Senate.

(c) DUTIES.—The Ambassador at Large shall have the following responsibilities:

(1) IN GENERAL.—The primary responsibility of the Ambassador at Large shall be to advance the right to freedom of religion abroad, to denounce the violation of that right, and to recommend appropriate responses by the United States Government when this right is violated.

(2) ADVISORY ROLE.—The Ambassador at Large shall be the principal adviser to the President and the Secretary of State regarding matters affecting religious freedom abroad and, with advice from the Commission on International Religious Persecution, shall make recommendations regarding the policies of the United States Government toward governments that violate the freedom of religion or that fail to ensure the individual’s right to religious belief and practice.

(3) DIPLOMATIC REPRESENTATION.—The Ambassador at Large is authorized to represent the United States in matters and cases relevant to religious persecution in—

(A) contacts with foreign governments, international organizations, intergovernmental organizations, and specialized agencies of the United Nations, the Organization on Security and Cooperation in Europe, and other organizations of which the United States is a member; and

(B) multilateral conferences and meetings relevant to religious persecution.

(4) REPORTING RESPONSIBILITIES.—The Ambassador at Large shall have the reporting responsibilities described in section 102.

(d) FUNDING.—The Secretary of State shall provide the Ambassador at Large with such funds as may be necessary for the hiring of staff for the Office, for the conduct of investigations by the Office, and for necessary travel to carry out the provisions of this section.

SEC. 102. REPORTS.

(a) PORTIONS OF ANNUAL HUMAN RIGHTS REPORTS.—The Ambassador at Large shall assist the Secretary of State in preparing those portions of the Human Rights Reports that relate to freedom of religion and discrimination based on religion and those portions of other information provided Congress under sections 116 and 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2151m, 2304) that relate to the right to religious freedom.

(b) ANNUAL REPORT ON RELIGIOUS PERSECUTION.—

(1) IN GENERAL.—

(A) DEADLINE FOR SUBMISSION.—Not later than May 1 of each year, the Ambassador at Large shall submit to the appropriate congressional committees an Annual Report on Religious Persecution, expanding upon the most recent Human Rights Reports. Each Annual Report on Religious Persecution shall contain the following:

(i) An identification of each foreign country the government of which engages in or tolerates acts of religious persecution.

(ii) An assessment and description of the nature and extent of religious persecution, including persecution of one religious group by another religious group, religious persecution by governmental and nongovernmental entities, persecution targeted at individuals or particular denominations or entire religions, and the existence of government policies violating religious freedom.

(iii) A description of United States policies in support of religious freedom, including a description of the measures and policies implemented during the preceding 12 months by the United States under title IV of this Act in opposition to religious persecution and in support of religious freedom.

(iv) A description of any binding agreement with a foreign government entered into by the United States under section 402(c).

(B) CLASSIFIED ADDENDUM.—If the Ambassador determines that it is in the national security interests of the United States or is necessary for the safety of individuals to be identified in the Annual Report, any information required by subparagraph (A), including measures taken by the United States, may be summarized in the Annual Report and submitted in more detail in a classified addendum to the Annual Report.

(C) DESIGNATION OF REPORT.—Each report submitted under this subsection may be referred to as the “Annual Report on Religious Persecution”.

(2) FOREIGN GOVERNMENT INPUT.—Prior to submission of each report under this subsection, the Secretary of State may offer the government of any country concerned an opportunity to respond to the relevant portions of the report. If the Secretary of State determines that doing so would further the purposes of this Act, the Secretary shall request the Ambassador at Large to include the country’s response as an addendum to the Annual Report on Religious Persecution.

(c) PREPARATION OF REPORTS REGARDING RELIGIOUS PERSECUTION.—

(1) STANDARDS AND INVESTIGATIONS.—The Secretary of State shall ensure that United States missions abroad maintain a consistent reporting standard and thoroughly investigate reports of religious persecution.

(2) CONTACTS WITH NGOS.—In compiling data and assessing the respect of the right to religious freedom for the Human Rights Reports and the Annual Report on Religious Persecution, United States mission personnel shall seek out and maintain contacts with religious and human rights nongovernmental organizations, with the consent of those organizations, including receiving reports and updates from such organizations and, when appropriate, investigating such reports.

(d) AMENDMENTS TO THE FOREIGN ASSISTANCE ACT.—

(1) CONTENT OF HUMAN RIGHTS REPORTS FOR COUNTRIES RECEIVING ECONOMIC ASSISTANCE.—Section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)) is amended—

(A) by striking “and” at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting “; and”; and

(C) by adding at the end the following:

“(6) wherever applicable, the practice of religious persecution, including gross violations of the right to religious freedom.”.

(2) CONTENTS OF HUMAN RIGHTS REPORTS FOR COUNTRIES RECEIVING SECURITY ASSISTANCE.—Section 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(b)) is amended—

(A) by inserting “and with the assistance of the Ambassador at Large for Religious Freedom” after “Labor”; and

(B) by inserting after the second sentence the following new sentence: “Such report shall also include, wherever applicable, information on religious persecution, including gross violations of the right to religious freedom.”.

SEC. 103. ESTABLISHMENT OF A RELIGIOUS FREEDOM INTERNET SITE.

In order to facilitate access by nongovernmental organizations (NGOs) and by the public around the world to international documents on the protection of religious freedom, the Ambassador at Large shall establish and maintain an Internet site containing major international documents relating to religious freedom, the Annual Report on Religious Persecution, and any other documentation or references to other sites as deemed appropriate or relevant by the Ambassador at Large.

SEC. 104. TRAINING FOR FOREIGN SERVICE OFFICERS.

Chapter 2 of title I of the Foreign Service Act of 1980 is amended by adding at the end the following new section:

“SEC. 708. TRAINING FOR FOREIGN SERVICE OFFICERS.

“The Secretary of State and the Ambassador at Large on International Religious Freedom, appointed under section 101(b) of the International Religious Freedom Act of 1998, acting jointly, shall establish as part of the standard training for officers of the Service, including chiefs of mission, instruction in the field of internationally recognized human rights. Such instruction shall include—

“(1) standards for proficiency in the knowledge of international documents and United States policy in human rights, and shall be mandatory for all members of the Service having reporting responsibilities relating to human rights, and for chiefs of mission; and

“(2) instruction on the international right to freedom of religion, the nature, activities,

and beliefs of different religions, and the various aspects and manifestations of religious persecution.”.

SEC. 105. HIGH-LEVEL CONTACTS WITH NGOS.

United States chiefs of mission shall seek out and contact religious nongovernmental organizations to provide high-level meetings with religious nongovernmental organizations where appropriate and beneficial. United States chiefs of mission and Foreign Service officers abroad shall seek to meet with imprisoned religious leaders where appropriate and beneficial.

SEC. 106. PROGRAMS AND ALLOCATIONS OF FUNDS BY UNITED STATES MISSIONS ABROAD.

It is the sense of Congress that—

(1) United States diplomatic missions in countries the governments of which engage in or tolerate religious persecution should develop, as part of annual program planning, a strategy to promote the respect of the internationally recognized right to freedom of religion; and

(2) in allocating or recommending the allocation of funds or the recommendation of candidates for programs and grants funded by the United States Government, United States diplomatic missions should give particular consideration to those programs and candidates deemed to assist in the promotion of the right to religious freedom.

SEC. 107. EQUAL ACCESS TO UNITED STATES MISSIONS ABROAD FOR CONDUCTING RELIGIOUS ACTIVITIES.

(a) IN GENERAL.—Subject to this section, the Secretary of State shall permit, on terms no less favorable than that accorded other nongovernmental activities, access to the premises of any United States diplomatic mission or consular post by any United States citizen seeking to conduct an activity for religious purposes.

(b) TIMING AND LOCATION.—The Secretary of State shall make reasonable accommodations with respect to the timing and location of such access in light of—

(1) the number of United States citizens requesting the access (including any particular religious concerns regarding the time of day, date, or physical setting for services);

(2) conflicts with official activities and other nonofficial United States citizen requests;

(3) the availability of openly conducted, organized religious services outside the premises of the mission or post; and

(4) necessary security precautions.

(c) DISCRETIONARY ACCESS FOR FOREIGN NATIONALS.—The Secretary of State may permit access to the premises of a United States diplomatic mission or consular post to foreign nationals for the purpose of attending or participating in religious activities conducted pursuant to this title.

SEC. 108. PRISONER LISTS AND ISSUE BRIEFS ON RELIGIOUS PERSECUTION CONCERNS.

(a) SENSE OF CONGRESS.—To encourage involvement with religious persecution concerns at every possible opportunity and by all appropriate representatives of the United States Government, it is the sense of Congress that officials of the executive branch of Government should promote increased advocacy on such issues during meetings between executive branch and congressional leaders and foreign dignitaries.

(b) RELIGIOUS PERSECUTION PRISONER LISTS AND ISSUE BRIEFS.—The Secretary of State, in consultation with United States chiefs of mission abroad, regional experts, the Ambassador at Large, and nongovernmental human rights and religious groups, shall prepare, and maintain issue briefs on religious freedom, on a country-by-country basis, consisting of lists of persons believed to be im-

prisoned for their religious faith, together with brief evaluations and critiques of policies of the respective country restricting religious freedom. The Secretary of State shall exercise appropriate discretion regarding the safety and security concerns of prisoners in considering the inclusion of their names on the lists.

(c) AVAILABILITY OF INFORMATION.—The Secretary shall provide these religious freedom issue briefs to executive branch and congressional officials and delegations in anticipation of bilateral contacts with foreign leaders, both in the United States and abroad.

TITLE II—COMMISSION ON INTERNATIONAL RELIGIOUS PERSECUTION

SEC. 201. ESTABLISHMENT AND COMPOSITION.

(a) GENERALLY.—There is established the United States Commission on International Religious Persecution.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of—

(A) the Ambassador at Large, who shall serve as Chair; and

(B) 6 other members, who shall be appointed as follows:

(i) 2 members of the Commission shall be appointed by the President.

(ii) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority Leader and the Minority Leader.

(iii) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the Majority Leader and the Minority Leader.

(2) SELECTION.—Members of the Commission shall be selected among distinguished individuals noted for their knowledge and experience in fields relevant to the issue of international religious persecution, including foreign affairs, human rights, and international law.

(3) TIME OF APPOINTMENT.—The appointments required by paragraph (1) shall be made not later than 120 days after the date of enactment of this Act.

(c) TERMS.—The term of office of each member of the Commission shall be 2 years, except that an individual may not serve more than 2 terms.

(d) QUORUM.—Four members of the Commission constitute a quorum of the Commission.

(e) MEETINGS.—No more than 15 days after the issuance of the Annual Report on Religious Persecution, the Commission shall convene.

(f) ADMINISTRATIVE SUPPORT.—The Ambassador at Large shall provide to the Commission such staff and administrative services of the Office as may be necessary for the Commission to perform its functions. The Secretary of State shall assist the Ambassador at Large and the Commission by detailing staff resources as needed and as appropriate.

(g) FUNDING.—

(1) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(2) NO COMPENSATION FOR GOVERNMENT EMPLOYEES.—Any member of the Commission who is an officer or employee of the United States shall not be paid compensation for services performed as a member of the Commission.

SEC. 202. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall have as its primary responsibility the con-

sideration of the facts and circumstances of religious persecution presented in the Annual Report on Religious Persecution, as well as information from other sources as appropriate, and to make appropriate policy recommendations to the President, the Secretary of State, and Congress.

(b) POLICY REVIEW AND RECOMMENDATIONS IN RESPONSE TO VIOLATIONS.—The Commission, in evaluating the United States Government policies in response to religious persecution, shall consider and recommend policy options, including diplomatic inquiries, diplomatic protest, official public protest, demarche of protest, condemnation within multilateral fora, cancellation of cultural or scientific exchanges, or both, cancellation of state visits, reduction of certain assistance funds, termination of certain assistance funds, imposition of targeted trade sanctions, imposition of broad trade sanctions, and withdrawal of the chief of mission.

(c) POLICY REVIEW AND RECOMMENDATIONS IN RESPONSE TO PROGRESS.—The Commission, in evaluating the United States Government policies with respect to countries found to be taking deliberate steps and making significant improvement in respect for religious freedom, shall consider and recommend policy options, including private commendation, diplomatic commendation, official public commendation, commendation within multilateral fora, an increase in cultural or scientific exchanges, or both, termination or reduction of existing sanctions, an increase in certain assistance funds, and invitations for official state visits.

(d) EFFECTS ON RELIGIOUS COMMUNITIES AND INDIVIDUALS.—Together with specific policy recommendations provided under subsections (b) and (c), the Commission shall also indicate its evaluation of the potential effects of such policies, if implemented, on the religious communities and individuals whose rights are found to be violated in the country in question.

(e) MONITORING.—The Commission shall, on an ongoing basis, monitor facts and circumstances of religious persecution, in consultation with independent human rights groups and nongovernmental organizations, including churches and other religious communities, and make such recommendations as may be necessary to the appropriate officials and offices in the United States Government.

SEC. 203. REPORT OF THE COMMISSION.

(a) IN GENERAL.—Not later than August 1 of each year, the Commission shall submit a report to the President and to Congress setting forth its recommendations for changes in United States policy based on its evaluations under section 202.

(b) CLASSIFIED FORM OF REPORT.—The report may be submitted in classified form, together with a public summary of recommendations.

(c) INDIVIDUAL OR DISSENTING VIEWS.—Each member of the Commission may include the individual or dissenting views of the member.

SEC. 204. TERMINATION.

The Commission shall terminate 4 years after the initial appointment of Commissioners.

TITLE III—NATIONAL SECURITY COUNCIL SEC. 301. SPECIAL ADVISER ON RELIGIOUS PERSECUTION.

Section 101 of the National Security Act of 1947 (50 U.S.C. 402) is amended by adding at the end the following new subsection:

“(i) It is the sense of the Congress that there should be within the staff of the National Security Council a Special Adviser to the President on Religious Persecution, whose position should be comparable to that of a director within the Executive Office of

the President. The Special Adviser should serve as a resource for executive branch officials, compiling and maintaining information on the facts and circumstances of religious persecution and violations of religious freedom, and making policy recommendations. The Special Adviser should serve as liaison with the Ambassador at Large on International Religious Freedom, the United States Commission on International Religious Persecution, Congress and, as advisable, religious nongovernmental organizations."

TITLE IV—SANCTIONS

Subtitle I—Targeted Responses to Religious Persecution Abroad

SEC. 401. EXECUTIVE MEASURES AND SANCTIONS IN RESPONSE TO FINDINGS MADE IN THE ANNUAL REPORT.

(a) IN GENERAL.—For each foreign country the government of which engages in or tolerates religious persecution, as described in the Annual Report on Religious Persecution, the President shall oppose such persecution and promote the right to freedom of religion in that country through the actions described in subsection (b).

(b) PRESIDENTIAL ACTIONS.—As expeditiously as practicable, but not later than one year after the date of submission of each Annual Report on Religious Persecution, the President, in consultation with the Ambassador at Large, the Special Advisor, and the Commission, shall take one or more of the actions described in paragraphs (1) through (16) of section 405(a) with respect to a foreign government described in subsection (a).

(c) EXECUTIVE MEASURES.—The President shall notify the appropriate congressional committees and, as appropriate, the Commission, of any measure or measures taken by the President under paragraphs (1) through (8) of section 405(a).

(d) SANCTIONS.—Any measure imposed under paragraphs (9) through (16) of section 405(a) may only be imposed in accordance with the procedures set forth in section 409 after the requirements of sections 403 and 404 have been satisfied.

(e) IMPLEMENTATION.—

(1) IN GENERAL.—In carrying out subsection (b), the President shall—

(A) take the action or actions that most appropriately respond to the nature and severity of the religious persecution;

(B) seek to the fullest extent possible to target action as narrowly as practicable with respect to the agency or instrumentality of the foreign government, or specific officials thereof, that are responsible for such persecution; and

(C) make every reasonable effort to conclude a binding agreement concerning the cessation of such persecution.

(2) GUIDELINES FOR SANCTIONS.—In addition to the guidelines under paragraph (1), the President, in determining whether to impose a sanction under paragraphs (9) through (16) of section 405(a) or commensurate action under section 405(b), shall seek to minimize any adverse impact on—

(A) the population of the country whose government is targeted by the sanction or sanctions; and

(B) the humanitarian activities of United States and foreign nongovernmental organizations in such country.

SEC. 402. PRESIDENTIAL DETERMINATIONS OF GROSS VIOLATIONS OF THE RIGHT TO RELIGIOUS FREEDOM.

(a) DETERMINATION OF GROSS VIOLATIONS OF THE RIGHT TO RELIGIOUS FREEDOM.—Not more than 30 days after transmittal of the Annual Report on Religious Persecution to the appropriate congressional committees, the President, in consultation with the Ambassador at Large, the Special Advisor, and

the Commission shall determine whether any of the governments of the countries described in the Annual Report on Religious Persecution have engaged in a consistent pattern of gross violations of the right to religious freedom.

(b) DETERMINATION OF RESPONSIBLE PARTIES.—The President shall at the same time as the determination under subsection (a) identify, to the extent practicable for each foreign government under that subsection, the responsible agency or instrumentality thereof and specific officials thereof that are responsible for such gross violations, in order to appropriately target sanctions in response.

(c) SANCTIONS AGAINST GOVERNMENTS ENGAGED IN GROSS VIOLATIONS OF RELIGIOUS FREEDOM.—

(1) IN GENERAL.—Subject to paragraph (2) of this subsection, in the case of a determination under subsection (a) with respect to a foreign government, unless Congress enacts a joint resolution of disapproval in accordance with section 409, the President shall carry out one or more of the following actions after the requirements of sections 403 and 404 have been satisfied:

(A) SANCTIONS.—One or more of the sanctions described in paragraphs (9) through (16) of section 405(a), to be determined by the President.

(B) COMMENSURATE ACTIONS.—Commensurate action, as described in section 405(b).

(2) SUBSTITUTION OF BINDING AGREEMENTS.—In lieu of carrying out action under paragraph (1), the President may conclude a binding agreement with the respective foreign government concerning the cessation of such violations. The existence of a binding agreement under this paragraph with a foreign government shall be considered by the President prior to making any determination under section 401 or this section.

SEC. 403. CONSULTATIONS.

(a) DUTY TO CONSULT WITH FOREIGN GOVERNMENTS PRIOR TO IMPOSITION OF SANCTIONS.—

(1) IN GENERAL.—The President shall—

(A) as soon as practicable after a determination is made under section 402(a) or a sanction is proposed to be taken under section 401(d), request consultation with each respective foreign government regarding the violations determined under those sections; and

(B) if agreed to, enter into such consultations, privately or publicly.

(2) USE OF MULTILATERAL FORA.—If the President determines it to be appropriate, such consultations may be sought and may occur in a multilateral forum.

(3) ELECTION OF NONDISCLOSURE OF NEGOTIATIONS TO PUBLIC.—If negotiations are undertaken or an agreement is reached with a foreign government regarding steps to alter the pattern of violations by that government, and if public disclosure of such negotiations or agreement would jeopardize the negotiations or the implementation of such agreement, as the case may be, the President may refrain from disclosing such negotiations and such agreement to the public, except that the President shall inform the appropriate congressional committees of the nature and extent of such negotiations and any agreement reached.

(b) DUTY TO CONSULT WITH HUMANITARIAN ORGANIZATIONS.—The President shall consult with appropriate humanitarian and religious organizations concerning the potential impact of the intended sanctions.

(c) DUTY TO CONSULT WITH UNITED STATES INTERESTED PARTIES.—The President shall consult with United States interested parties as to the potential impact of the intended sanctions on the economic or other interests

of the United States. The President shall provide the opportunity for consultation with, and the submission of comments by, those United States interested parties likely to be affected by intended United States measures.

SEC. 404. REPORT TO CONGRESS.

(a) IN GENERAL.—Subject to subsection (b), not later than September 1 of any year in which a determination is made under section 402(a) with respect to a foreign country, or not later than 90 days after the President may determine to take action under section 401(d) with respect to a foreign country, as the case may be, the President shall submit a report to Congress containing the following:

(1) IDENTIFICATION OF SANCTIONS.—An identification of the sanction or sanctions described in paragraphs (9) through (16) of section 405(a) proposed to be taken against the foreign country.

(2) DESCRIPTION OF VIOLATIONS.—A description of the violations giving rise to the sanction or sanctions proposed to be taken.

(3) PURPOSES OF SANCTIONS.—A description of the purpose of the sanction.

(4) EVALUATION.—An evaluation, in consultation with the Ambassador at Large, the Commission, the Special Advisor, and the parties described in section 403 (b) and (c) of (A) the impact upon the foreign government, (B) the impact upon the population of the country, and (C) the impact upon the United States economy and other interested parties. The President may withhold part or all of such evaluation from the public but shall provide the entire evaluation to the appropriate congressional committees.

(5) EXHAUSTION OF POLICY OPTIONS.—A statement that other policy options designed to bring about alteration of the gross violations of the right to religious freedom have reasonably been exhausted, including the consultations required in section 403.

(6) DESCRIPTION OF MULTILATERAL NEGOTIATIONS.—A description of multilateral negotiations sought or carried out, if appropriate and applicable.

(b) DELAY IN TRANSMITTAL OF REPORT FOR THE PURPOSE OF CONTINUING NEGOTIATIONS.—If, on or before the date that the President would (but for this subsection) submit a proposal under subsection (a) to Congress to impose any sanction under paragraphs (9) through (16) of section 405(a) against a foreign country—

(1) negotiations are still taking place with the government of that country, and

(2) the President determines and certifies to Congress that a single, additional period of time not to exceed 90 days is necessary for such negotiations to continue, then the President shall not be required to submit the proposal to Congress until the expiration of that period of time.

SEC. 405. DESCRIPTION OF EXECUTIVE MEASURES AND SANCTIONS.

(a) DESCRIPTION OF MEASURES AND SANCTIONS.—Except as provided in subsection (d), the Executive measures and sanctions referred to in this subsection are the following:

(1) A private demarche.

(2) An official public demarche.

(3) A public condemnation.

(4) A public condemnation within one or more multilateral fora.

(5) The cancellation of one or more scientific exchanges.

(6) The cancellation of one or more cultural exchanges.

(7) The denial of one or more state visits.

(8) The cancellation of one or more state visits.

(9) The withdrawal, limitation, or suspension of United States development assistance in accordance with the provisions of section 116 of the Foreign Assistance Act of 1961.

(10) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit with respect to the specific government, agency, instrumentality, or official determined by the President to be responsible for gross violations of the right to religious freedom.

(11) The withdrawal, limitation, or suspension of United States security assistance in accordance with the provisions of section 502B of the Foreign Assistance Act of 1961.

(12) The withdrawal, limitation, or suspension of preferential tariff treatment accorded under—

(A) title V of the Trade Act of 1974 (relating to the Generalized System of Preferences);

(B) the Caribbean Basin Economic Recovery Act;

(C) the Andean Trade Preference Act; or

(D) any other law providing preferential tariff treatment.

(13) Consistent with section 701 of the International Financial Institutions Act of 1977, directing the United States executive directors of international financial institutions to vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official determined by the President to be responsible for such persecution.

(14) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses and not to grant any other specific authority (or a specified number of authorities) to export any goods or technology to the specific foreign government, agency, instrumentality, or official determined by the President to be responsible for such persecution under—

(A) the Export Administration Act of 1979;

(B) the Arms Export Control Act;

(C) the Atomic Energy Act of 1954; or

(D) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

(15) Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period to the specific foreign government, agency, instrumentality, or official determined by the President to be responsible for the violations.

(16) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from the foreign government, entities, or officials determined by the President to be responsible for the violations.

(b) **COMMENSURATE ACTION.**—Except as provided in subsection (d), the President may substitute any other action authorized by law for any action described in paragraphs (1) through (16) of subsection (a) if such action is commensurate in effect to the action substituted and if the action would further the policy of the United States set forth in section 2 of this Act. The President shall seek to take all appropriate and feasible actions authorized by law to obtain the cessation of the violations. In the case of the development of commensurate action as a substitute for any sanction described in paragraphs (9) through (16) of subsection (a), the President shall conduct all consultations described in section 403 prior to taking such action. If commensurate action is taken, the President shall report such action, together with an explanation for taking such action, to the appropriate congressional committees.

(c) **BINDING AGREEMENTS.**—The President may negotiate and enter into a binding agreement with a foreign government that obligates such government to cease, or take substantial steps to address and phase out, the act, policy, or practice constituting the religious persecution. The entry into force of a binding agreement for the cessation of the violations shall be a primary objective for the President in responding to a foreign government that engages in a consistent pattern of gross violations of the right to religious freedom.

(d) **EXCEPTIONS.**—Any action taken pursuant to subsection (a) or (b) may not—

(1) prohibit or restrict the provision of medicine, medical equipment or supplies, food, or other humanitarian assistance; or

(2) impede any action taken by the United States Government to enforce the right to maintain intellectual property rights.

SEC. 406. CONTRACT SANCTITY.

The President shall not be required to apply or maintain any sanction under this subtitle—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing that the person or other entity to which the sanction would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing that such articles or services are essential to the national security under defense co-production agreements; or

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanction.

SEC. 407. PRESIDENTIAL WAIVER.

The President may waive the requirement to take an action under this subtitle with respect to a country, if—

(1) the President determines and so reports to the appropriate congressional committees that—

(A) the respective foreign government has ceased or taken substantial steps to cease the violations giving rise to the imposition of the measure or sanction;

(B) the exercise of such waiver authority would better further the purposes of this Act; or

(C) the national security of the United States requires the exercise of such waiver authority; and

(2) the requirements of congressional review under section 409 have been satisfied.

SEC. 408. PUBLICATION IN FEDERAL REGISTER.

The President shall cause to be published in the Federal Register the following:

(1) **DETERMINATIONS OF VIOLATOR GOVERNMENTS, OFFICIALS, AND ENTITIES.**—Consistent with section 654(c) of the Foreign Assistance Act of 1961, any determination that a government has engaged in gross violations of the right to religious freedom, together with, when applicable and possible, the officials or entities determined to be responsible for the violations. Such a determination shall include a notification to all interested parties to provide consultation and submit comments concerning sanctions that may be taken by the United States in response to the violations.

(2) **SANCTIONS.**—A description of any sanction that takes effect pursuant to section 409, and the effective date of the sanction. A description of the sanction may be withheld

if disclosure is deemed to jeopardize national security.

(3) **DELAYS IN TRANSMITTAL OF SANCTION REPORTS.**—Any delay in transmittal of a sanction report, as described in section 404(b).

(4) **WAIVERS.**—Any waiver under section 407.

SEC. 409. CONGRESSIONAL REVIEW.

(a) **IN GENERAL.**—

(1) **PROPOSALS SUBJECT TO CONGRESSIONAL REVIEW.**—Each of the following proposals shall take effect 30 session days of Congress after the President transmits the proposal to Congress unless, within such period, Congress enacts a joint resolution disapproving the sanction, waiver, or termination of a sanction, as the case may be, in accordance with subsection (b):

(A) Any sanction proposed under section 404(a).

(B) Any waiver proposed under section 407(2).

(C) Any proposed termination of a sanction under section 410(2).

(2) **SUBMISSION OF REVISED PROPOSALS TO CONGRESS.**—In the event that Congress enacts a joint resolution of disapproval under paragraph (1), the President shall, within 30 days of the date of any override of the President's veto of that resolution, revise the proposed sanction, waiver, or termination of sanction and submit the revised proposal to Congress for consideration in accordance with subsection (b).

(b) **CONGRESSIONAL PRIORITY PROCEDURES.**—

(1) **JOINT RESOLUTION DEFINED.**—

(A) **DISAPPROVAL RESOLUTIONS FOR SANCTION PROPOSALS.**—For the purpose of subsection (a)(1)(A), the term "joint resolution" means only a joint resolution introduced after the date on which the report of the President under section 404 is received by Congress, the matter after the resolving clause of which is as follows: "That Congress disapproves the sanction or sanctions proposed by the President in the report transmitted under section 404(a) of the International Religious Freedom Act of 1998 on _____", with the blank filled in with the appropriate date.

(B) **DISAPPROVAL RESOLUTIONS FOR PRESIDENTIAL WAIVERS.**—For the purpose of subsection (a)(1)(B), the term "joint resolution" means only a joint resolution introduced after the date on which the report of the President under section 407(1) is received by Congress, the matter after the resolving clause of which is as follows: "That Congress disapproves the waiver proposed by the President in the report transmitted under section 407(1) of the International Religious Freedom Act of 1998 on _____", with the blank filled in with the appropriate date.

(C) **DISAPPROVAL RESOLUTIONS FOR PROPOSALS TO TERMINATE SANCTIONS.**—For the purpose of subsection (a)(1)(C), the term "joint resolution" means only a joint resolution introduced after the date on which the certification of the President under section 410(2) is received by Congress, the matter after the resolving clause of which is as follows: "That Congress disapproves the termination of sanction or sanctions proposed by the President in the certification transmitted under section 410(2) of the International Religious Freedom Act of 1998 on _____", with the blank filled in with the appropriate date.

(2) **DEFINITION.**—In this section, the term "session day" means a day on which either House of Congress is in session.

(3) **REFERRAL TO COMMITTEE.**—A resolution described in paragraph (1) introduced in the House of Representatives shall be referred to the Committee on International Relations of the House of Representatives. A resolution described in paragraph (1) introduced in the

Senate shall be referred to the Committee on Foreign Relations of the Senate. Such a resolution may not be reported before the eighth day after its introduction.

(4) **DISCHARGE FROM COMMITTEE.**—If the committee to which is referred a resolution described in paragraph (1) has not reported such resolution (or an identical resolution) at the end of fifteen calendar days after its introduction, such committee shall be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(5) **FLOOR CONSIDERATION.**—

(A) **MOTION TO PROCEED.**—When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1), notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(B) **DEBATE ON THE RESOLUTION.**—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) **VOTE ON FINAL PASSAGE.**—Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) **APPEALS OF RULINGS.**—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

(6) **TREATMENT OF OTHER HOUSE'S RESOLUTION.**—If, before the passage by one House of Congress of a resolution of that House described in paragraph (1), that House receives from the other House a resolution described in paragraph (1), then the following procedures shall apply:

(A) **REFERRAL OF RESOLUTIONS OF SENDING HOUSE.**—The resolution of the sending House shall not be referred to a committee in the receiving House.

(B) **PROCEDURES IN RECEIVING HOUSE.**—With respect to a resolution of the House receiving the resolution—

(1) the procedure in that House shall be the same as if no resolution had been received from the sending House; but

(ii) the vote on final passage shall be on the resolution of the sending House.

(C) **DISPOSITION OF RESOLUTIONS OF RECEIVING HOUSE.**—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution originated in the receiving House.

(7) **PROCEDURES AFTER ACTION BY BOTH THE HOUSE AND SENATE.**—If the House receiving a resolution from the other House after the receiving House has disposed of a resolution originated in that House, the action of the receiving House with regard to the disposition of the resolution originated in that House shall be deemed to be the action of the receiving House with regard to the resolution originated in the other House.

(8) **RULES OF THE SENATE AND THE HOUSE.**—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SEC. 410. TERMINATION OF SANCTIONS.

Any sanction imposed under section 409 with respect to a foreign country shall terminate on the earlier of the following dates:

(1) **TERMINATION DATE.**—Within 2 years of the effective date of the sanction unless expressly reauthorized by law.

(2) **FOREIGN GOVERNMENT ACTIONS.**—Upon the determination by the President and certification to Congress that the foreign government has ceased or taken substantial steps to cease the gross violations of religious freedom, subject to the congressional review procedures described in section 409.

Subtitle II—Strengthening Existing Law

SEC. 421. UNITED STATES ASSISTANCE.

(a) **IMPLEMENTATION OF PROHIBITION ON ECONOMIC ASSISTANCE.**—Section 116(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(c)) is amended—

(1) in the text above paragraph (1), by inserting “and in consultation with the Ambassador at Large for Religious Freedom” after “Labor”;

(2) by striking “and” at the end of paragraph (1);

(3) by striking the period at the end of paragraph (2) and inserting “; and”; and

(4) by adding at the end the following new paragraph:

“(3) whether the government—
“(A) has engaged in gross violations of the right to freedom of religion; or

“(B) has failed to undertake serious and sustained efforts to combat gross violations of the right to freedom of religion, when such efforts could have been reasonably undertaken.”

(b) **IMPLEMENTATION OF PROHIBITION ON MILITARY ASSISTANCE.**—Section 502B(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)) is amended by adding at the end the following new paragraph:

“(4) In determining whether the government of a country engages in a consistent pattern of gross violations of internationally recognized rights, the President shall give particular consideration to whether the government—
“(A) has engaged in gross violations of the right to freedom of religion; or

“(B) has failed to undertake serious and sustained efforts to combat gross violations

of the right to freedom of religion, when such efforts could have been reasonably undertaken.”

SEC. 422. MULTILATERAL ASSISTANCE.

Section 701 of the International Financial Institutions Act (22 U.S.C. 262d) is amended by adding at the end the following new subsection:

“(g) In determining whether a country is in gross violation of internationally recognized human rights standards, as described in subsection (a), the President, in consultation with the Ambassador at Large, shall give particular consideration to whether a foreign government—
“(1) has engaged in gross violations of the right to freedom of religion; or

“(2) has failed to undertake serious and sustained efforts to combat gross violations of the right to freedom of religion, when such efforts could have been reasonably undertaken.”

SEC. 423. EXPORTS OF ITEMS RELATING TO RELIGIOUS PERSECUTION.

(a) **MANDATORY LICENSING.**—Notwithstanding any other provision of law, the Secretary of Commerce, with the concurrence of the Secretary of State, the Ambassador at Large, and the Special Adviser, shall include on the list of crime control and detection instruments or equipment controlled for export and reexport under section 6(n) of the Export Administration Act of 1979 (22 U.S.C. App. 2405(n)), or under any other provision of law, items that the Secretary of State, in consultation with the Ambassador at Large and the Special Adviser, determines are being used or are intended for use directly and in significant measure to carry out gross violations of the right to freedom of religion.

(b) **LICENSING BAN.**—The prohibition on the issuance of a license for export of crime control and detection instruments or equipment under section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) shall apply to the export and reexport of any item included pursuant to subsection (a) on the list of crime control instruments.

TITLE V—PROMOTION OF RELIGIOUS FREEDOM

SEC. 501. ASSISTANCE FOR PROMOTING RELIGIOUS FREEDOM.

(a) **FINDINGS.**—Congress makes the following findings:

(1) In many nations where severe violations of religious freedom occur, there is not sufficient statutory legal protection for religious minorities or there is not sufficient cultural and social understanding of international norms of religious freedom.

(2) Accordingly, in its foreign assistance already being disbursed, the United States should make a priority of promoting and developing legal protections and cultural respect for religious freedom.

(b) **ALLOCATION OF FUNDS FOR INCREASED PROMOTION OF RELIGIOUS FREEDOMS.**—Section 116(e) of the Foreign Assistance Act of 1961 is amended by inserting “and the right to free religious belief and practice” after “adherence to civil and political rights”.

SEC. 502. INTERNATIONAL BROADCASTING.

(a) Section 302(1) of the International Broadcasting Act of 1994 is amended by inserting “and of conscience (including freedom of religion)” after “freedom of opinion and expression”.

(b) Section 303(a) of the International Broadcasting Act of 1994 is amended—

(1) by striking “and” at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting “; and”; and

(3) by adding at the end the following: “(8) promote respect for human rights, including freedom of religion.”

SEC. 503. INTERNATIONAL EXCHANGES.

Section 102(b) of the Mutual Educational and Cultural Exchange Act of 1961 is amended—

- (1) by striking “and” after paragraph (10);
- (2) by striking the period at the end of paragraph (11) and inserting “; and”; and
- (3) by adding at the end the following:

“(12) promoting respect for and guarantees of religious freedom abroad by interchanges and visits between the United States and other nations of religious leaders, scholars, and religious and legal experts in the field of religious freedom.”.

SEC. 504. FOREIGN SERVICE AWARDS.

(a) **PERFORMANCE PAY.**—Section 405(d) of the Foreign Service Act of 1980 is amended by inserting after the first sentence the following: “Such service in the promotion of internationally recognized human rights, including the right to religious freedom, shall serve as a basis for granting awards under this section.”.

(b) **FOREIGN SERVICE AWARDS.**—Section 614 of the Foreign Service Act of 1980 is amended by adding at the end the following new sentence: “Distinguished, meritorious service in the promotion of internationally recognized human rights, including the right to religious freedom, shall serve as a basis for granting awards under this section.”.

TITLE VI—REFUGEE, ASYLUM, AND CONSULAR MATTERS

SEC. 601. USE OF ANNUAL REPORT.

(a) **DESCRIPTION OF TRAINING.**—The Annual Report on Religious Persecution shall include a description of training described in subsection (b) on religious persecution provided to immigration judges, consular, refugee, and asylum officers.

(b) **USE OF THE ANNUAL REPORT.**—The Annual Report on Religious Persecution, together with other relevant documentation, shall serve as a resource for immigration judges and consular, refugee, and asylum officers in cases involving claims of persecution on the grounds of religion. Absence of reference by the Annual Report on Religious Persecution to conditions described by the alien shall not constitute sole grounds for a denial of the alien’s claim.

SEC. 602. REFORM OF REFUGEE POLICY.

(a) **TRAINING.**—

(1) **IN GENERAL.**—The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases with the same training as that provided to officers adjudicating asylum cases.

(2) **CONTENT OF TRAINING.**—Such training shall include country-specific conditions, instruction on the right to religious freedom, methods of religious persecution, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

(b) **TRAINING FOR CONSULAR OFFICERS.**—(1) Section 708 of the Foreign Service Act of 1980, as added by section 104 of this Act, is further amended—

(A) by inserting “(a)” before “The Secretary of State”; and

(B) by adding at the end the following:

“(b) The Secretary of State shall provide sessions on refugee law and adjudications and on religious persecution, to each individual seeking a commission as a United States consular officer.”.

(2) Section 312(a) of the Foreign Service Act of 1980 is amended by inserting after the first sentence the following: “In order to receive such a consular commission, a member of the Service shall complete the training required under section 708.”.

(c) **GUIDELINES FOR REFUGEE-PROCESSING POSTS.**—

(1) **GUIDELINES FOR ADDRESSING HOSTILE BIASES.**—The Attorney General and the Sec-

retary of State shall develop and implement guidelines that address potential hostile biases in personnel of the Immigration and Naturalization Service that are hired abroad and involved with duties which could constitute an effective barrier to a refugee claim if such personnel carries a hostile bias toward the claimant on the grounds of religion, race, nationality, membership in a particular social group or political opinion.

(2) **GUIDELINES FOR REFUGEE-PROCESSING POSTS IN ESTABLISHING AGREEMENTS WITH JOINT VOLUNTARY AGENCIES.**—The Attorney General and the Secretary of State shall develop guidelines to ensure uniform procedures to the extent possible with Joint Voluntary Agencies, and to ensure that the Joint Voluntary Agencies process is enhanced and faulty preparation of claims does not result in the failure of a genuine claim to refugee status.

(d) **ANNUAL CONSULTATION.**—In carrying out the responsibilities of the Department of State under the appropriate consultation requirement of section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)), the Secretary of State shall specifically address religious persecution in the report provided by the Department of State, and by providing testimony by the Ambassador at Large. The Secretary of State shall also provide religious nongovernmental organizations and human rights nongovernmental organizations the opportunity to testify.

SEC. 603. REFORM OF ASYLUM POLICY.

(a) **GUIDELINES.**—The Attorney General and the Secretary of State shall develop guidelines to ensure that interpreters with hostile biases, including personnel of airlines owned by governments known to be involved in practices which would meet the definition of persecution under international refugee law, shall not in any manner be used to interpret conversations between aliens and inspection or asylum officers.

(b) **TRAINING FOR ASYLUM OFFICERS.**—The Attorney General, in consultation with the Ambassador-at-Large, shall provide training to all officers adjudicating asylum cases on the nature of religious persecution abroad, including country-specific conditions, instruction on the right to religious freedom, methods of religious persecution, and applicable distinctions within a country in the treatment of various religious practices and believers.

(c) **TRAINING FOR IMMIGRATION JUDGES.**—The Executive Office of Immigration Review of the Department of Justice shall incorporate into its initial and ongoing training of immigration judges training on the extent and nature of religious persecution internationally, including country-specific conditions, and including use of the Annual Report on Religious Persecution. Such training shall include governmental and nongovernmental methods of persecution employed, and differences in the treatment of religious groups by such persecuting entities.

SEC. 604. INADMISSIBILITY OF FOREIGN GOVERNMENT OFFICIALS WHO HAVE ENGAGED IN GROSS VIOLATIONS OF THE RIGHT TO RELIGIOUS FREEDOM.

(a) **INELIGIBILITY FOR VISAS OR ADMISSION.**—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following new subparagraph:

“(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE ENGAGED IN GROSS VIOLATIONS OF THE RIGHT TO RELIGIOUS FREEDOM.—

“(i) **IN GENERAL.**—Any alien who, while serving as a foreign government official, directly engaged in gross violations of the right to religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998, and the spouse and children, if any, of the alien, are inadmissible.

“(ii) **WAIVER.**—

“(I) **IN GENERAL.**—The Secretary of State may waive the application of clause (i) if the Secretary determines that the exclusion of the alien would jeopardize a compelling United States foreign policy interest.

“(II) **NONDELEGATION OF AUTHORITY.**—The Secretary of State may not delegate the authority to make a determination under subclause (I).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to aliens seeking to enter the United States on or after the date of enactment of this Act.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. BUSINESS CODES OF CONDUCT.

(a) **CONGRESSIONAL FINDING.**—Congress recognizes the increasing importance of transnational corporations as global actors, and their potential for providing positive leadership in their host countries in the area of human rights.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that transnational corporations operating in countries the governments of which engage in gross violations of the right to religious freedom, as identified in the Annual Report on Religious Persecution, should adopt codes of conduct—

(1) upholding the right to religious freedom of their employees; and

(2) ensuring that a worker’s religious views and peaceful practices of belief in no way affect, or be allowed to affect, the status or terms of his or her employment.

SEC. 702. INTERNATIONAL CRIMINAL COURT.

It is the sense of Congress that in negotiating the definitions of crimes to be included in the subject matter jurisdiction of the International Criminal Court, the President should pursue the inclusion in such jurisdiction of gross violations of the right to religious freedom to the extent such violations fall within the meaning in international law of crimes against humanity or genocide.

Mr. LIEBERMAN. Mr. President, I rise to join my distinguished colleague, Senator NICKLES, the assistant majority leader, and my esteemed colleagues Senators KEMPTHORNE, MACK, HUTCHINSON, CRAIG, and DEWINE as a co-sponsor of The International Religious Freedom Act of 1998.

Freedom of religion is a bedrock principle for the American people, a cherished right that lies at the very foundation of our country. It is appropriate, and it is right, that we as Americans express our concern about abuses of that freedom as a cornerstone of our foreign policy. This is not a concern that is unique to Americans, for the freedom of religion is explicitly recognized by the Universal Declaration of Human Rights. Sadly, and tragically, that recognition has not served to prevent the assault on believers of a variety of religions simply for seeking to follow their faith.

We must not be silent. The International Religious Freedom Act of 1998 is a serious, thoughtful, and comprehensive approach to the problem of religious persecution. This bill employs a broad range of tools within the United States foreign policy apparatus for the most flexible, appropriate, and enduring response to violations of religious liberty.

The bill is carefully crafted to do the following: promote religious freedom through both incentives and sanctions,

with the long-term goal of alleviating religious persecution rather than merely punishing governments; build on principles contained in U.S. and international human rights law, on negotiating principles of U.S. Trade law, and on ideas advocated by religious and human rights leaders; dispel the option of silence, with its Annual Report publicly addressing all forms of religious persecution; promote the conclusion of binding agreements with offending governments to cease the violations, allowing for reasonable negotiation to achieve this goal; and sanction gross violators, through an annual review and sanctions process.

The issue of religious persecution is one that we must be concerned about, one that we must take action on. The International Religious freedom Act of 1998 is an effective means of doing so and I am honored to be an original cosponsor of it. There are other excellent approaches to this critical international problem, including the legislation cosponsored by Congressman WOLF and Senator SPECTOR. In the weeks ahead we will look forward to working with all of our colleagues on this issue, inviting and welcoming a collective approach that will result in our bringing the most effective legislation to pass.

By Mr. CAMPBELL:

S. 1870. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN GAMING REGULATORY ACT
AMENDMENTS OF 1998

Mr. CAMPBELL. Mr. President, today I am pleased to introduce the Indian Gaming Regulatory Act Amendments of 1998 to reform the federal components of Indian gaming regulation.

I wish to begin by acknowledging the work in this area by the two distinguished individuals who preceded me as the chairman of the Senate Indian Affairs Committee, Senators MCCAIN and INOUE. This legislation builds upon their extraordinary efforts to listen to all sides of this debate and broker a fair and equitable compromise. I seek to continue this tradition by providing a starting point for negotiations among all of those with an interest in Indian gaming, and by addressing those areas that are most in need of immediate reform.

This bill will revitalize the National Indian Gaming Commission, by ensuring that it has the authority to develop and impose a series of minimum federal standards on all Indian gaming operations. It will reform and restore the compact negotiation process by providing an alternative compact negotiation process in those instances where a state wishes to exercise its 11th Amendment immunity from lawsuits and its 10th Amendment right to decide for itself whether it wishes to regulate on-reservation gaming. Finally, this bill addresses the two issues that in my

opinion are most in need of immediate reform. First, the bill applies the standard post-employment restrictions for former federal officials who are employed by any tribe that stood to benefit from any gaming-related decisions the officials made while they were federal employees. Second, the bill will prohibit the acquisition of off-reservation lands for gaming activities unless the tribe and the state agree to do so.

Ten years ago the Congress enacted the Indian gaming legislation that many will agree needs to be updated. In 1988 most Indian gaming consisted of high stakes bingo and similar types of games. Since then, it has grown to become a billion dollar activity and has provided many tribes and surrounding communities with much-needed capital and employment opportunities.

For those tribes lucky enough to be well situated geographically, gaming has proven successful. Where welfare rolls once bulged, tribes are employing thousands of people—both Indian as well as non-Indian. Once entirely reliant on federal transfer payments, many tribes are beginning to diversify their economies and provide jobs and hope to their members.

For most tribes, however, gaming is not a viable development alternative. Indeed, only one-third of all federally-recognized tribes have any form of gaming and most of that is more like charitable bingo than Las Vegas or Atlantic City. On-line gaming, as well as competition from local and international operations, has created a very tight market. In Washington State, for example, as well as in other parts of the country, market saturation is leading some tribes to close their operations for good.

Over the past ten years, the statute has only been significantly amended one time—in 1997 I introduced a measure to provide the federal National Indian Gaming Commission with the resources it needs to monitor and regulate certain Indian gaming operations. Today, a strengthened commission is beginning to fulfill its obligations under the statute and help maintain the integrity of Indian gaming nationwide.

The lack of uniform standard operating procedures for Indian gaming continues to cause anxiety for many of those inside and outside of Indian country. Many Indian tribes, in cooperation with the states where gaming is located, have developed sophisticated gaming regulatory procedures and standards. Many tribes have put in place standards regarding the rules of play for their games, as well as financial and accounting standards governing those games. Not all tribal-state gaming compacts mandate such sophisticated regulatory frameworks.

By setting threshold standards at the federal level, this bill will mean that Indian gaming customers throughout the nation can be assured that every Indian gaming establishment must comply with a federally established

level of regulation, operation, and management, just as they are already assured that gaming proceeds may only be spent for certain purposes set out in the Act.

When the Congress enacted the IGRA in 1988, states were invited, for the first time ever, to play a significant role in the regulation of activities that take place on Indian lands. The statute required tribes to seek to negotiate a gaming compact with a state before commencing any casino-style gaming. Though there were bumps along the way, this was a major concession by Indian tribes and one that worked reasonably well for 8 years, and which will continue to be available if it is chosen by both a state and a tribe.

Under IGRA, before a tribe may commence casino-style gaming, it must seek to negotiate a gaming compact with the state where the gaming will occur. Up until 1996, if a federal court determined that the state was negotiating in bad faith or if the state decided simply not to negotiate, the tribe had the option of filing a lawsuit to bring about good faith negotiations.

In 1996, the Supreme Court turned this process upside down when it handed down its decision in Seminole Tribe of Indians v. State of Florida. This decision said that a state may assert its Eleventh Amendment immunity from lawsuits to preclude tribes from suing it in order to conclude a gaming agreement. Also, some states have asserted that the IGRA may force them to regulate reservation-based gaming in violation of their 10th Amendment rights. My bill will allow tribes and states to continue to use the existing process to negotiate compacts if that is their desire.

As I believe the Act should respect each state's sovereign right to absent itself from this process if it chooses to, we must also respect the Supreme Court's decision that Indian tribes have the sovereign right to offer gaming activities that do not violate the public policy of the state where those activities are offered. This approach is consistent with what the Congress intended in 1988.

Finally, there are ongoing Congressional investigations of the so-called "Hudson Dog Track" matter involving whether the Interior Department denied an application by certain Indian tribes to acquire off-reservation lands for gaming purposes because of campaign contributions by a rival group of tribes. Even before these allegations surfaced, I expressed strong concerns about the acquisition of off-reservation lands for gaming purposes.

The IGRA requires the Interior Secretary to consult with local officials, local communities, and nearby tribes in evaluating the tribe's application to take lands into trust. The Act also provides State governors with an absolute veto over such applications. In my opinion, federal laws and regulations already make it very difficult for the Secretary to take land into trust for a

tribe if it is located away from a tribe's reservation or previous homeland. As a result, few tribes apply to have off-reservation lands taken into trust, and even fewer are successful.

The IGRA imposes additional requirements on such acquisitions if there is any possibility that the lands will be used for gaming purposes. As a result of these requirements, I am aware of only two or three such acquisitions. Yet the opposition to Indian gaming that results from the mere possibility of such acquisitions is significant. This opposition far exceeds that speculative possibility that the Secretary, a local community, and a state's governor will all concur with such an acquisition. Thus, my bill will preclude off-reservation acquisitions unless the tribe and the state reach agreement to allow those lands to be used for gaming purposes. This provision will therefore encourage tribal-state cooperation rather than tribal-state conflict when it comes to gaming matters.

My bill will also remove the argument that those Indian groups that are laboring to achieve federal recognition as tribes are doing so only to develop gaming. Achieving federal recognition is difficult enough, I do not believe it should be further complicated by squabbles over gaming.

My bill will eliminate any appearance that federal officials and employees who are responsible for making decisions about Indian gaming are "cashing in" on their activities when they leave government service. By closing an existing loophole, my bill will establish that those federal employees who have made decisions concerning a tribe's gaming activities are bound by the same policies, procedures, and criminal laws that prevent other federal employees from profiting from decisions they made when working for the government. But it also preserves those provisions in the Indian Self-Determination and Education Assistance Act, which have dramatically reduced the number of federal employees by encouraging their employment by the tribes that contract to provide federal services under self-governance compacts and self-determination act contracts.

I believe this bill addresses the most pressing concerns raised by states, local governments, and Indian tribes. Like all attempts at compromise, few parties will be completely satisfied. The legislation I am introducing will both please and disappoint the states as well as the tribes. Nonetheless, as Chairman of the Committee on Indian Affairs, demonstrating a willingness to serve as an honest broker will, in my opinion, do more to foster genuine and lasting reform than simply becoming an advocate for one side or one point of view. Let there be no question of my commitment to ensure that Indian gaming be operated fairly and consistently with all relevant laws, and that the goals and objectives of the IGRA are fully achieved.

As I have indicated, the Committee will address these and related issues in the coming weeks. By introducing this legislation, it is my hope that those with concerns with the regulation of Indian gaming work with me in the Committee to fully and fairly debate the issues before any actions are taken to amend the Act.

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

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

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 "Indian Gaming Regulatory Improvement Act of 1998".

SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT.

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended—

(1) by striking the first section and inserting the following new section:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Indian Gaming Regulatory Act'.

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

- "Sec. 1. Short title; table of contents.
- "Sec. 2. Congressional findings.
- "Sec. 3. Purposes.
- "Sec. 4. Definitions.
- "Sec. 5. National Indian Gaming Commission.
- "Sec. 6. Powers and authority of the National Indian Gaming Commission and Chairman.
- "Sec. 7. Regulatory framework.
- "Sec. 8. Negotiated rulemaking.
- "Sec. 9. Requirements for the conduct of class I and class II gaming on Indian lands.
- "Sec. 10. Class III gaming on Indian lands.
- "Sec. 11. Review of contracts.
- "Sec. 12. Civil penalties.
- "Sec. 13. Judicial review.
- "Sec. 14. Commission funding.
- "Sec. 15. Authorization of appropriations.
- "Sec. 16. Application of Internal Revenue Code of 1986; access to information by States and tribal governments.
- "Sec. 17. Gaming proscribed on lands acquired in trust after the date of enactment of this Act.
- "Sec. 18. Dissemination of information.
- "Sec. 19. Severability.
- "Sec. 20. Criminal penalties.
- "Sec. 21. Conforming amendment.";
- "Sec. 22. Commission staffing."

(2) by striking sections 2 and 3 and inserting the following:

"SEC. 2. CONGRESSIONAL FINDINGS.

- "The Congress finds that—
- "(1) Indian tribes are—
- "(A) engaged in the operation of gaming activities on Indian lands as a means of generating tribal governmental revenue; and
- "(B) licensing those activities;
- "(2) because of the unique political and legal relationship between the United States and Indian tribes, Congress has the responsibility of protecting tribal resources and ensuring the continued viability of Indian gaming activities conducted on Indian lands;
- "(3) clear Federal standards and regulations for the conduct of gaming on Indian lands will assist tribal governments in assuring the integrity of gaming activities conducted on Indian lands;

"(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong Indian tribal governments;

"(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands, if the gaming activity—

"(A) is not specifically prohibited by Federal law; and

"(B) is conducted within a State that does not, as a matter of public policy, prohibit that gaming activity;

"(6) Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country (as defined in section 1151 of title 18, United States Code);

"(7) systems for the regulation of gaming activities on Indian lands should meet or exceed federally established minimum regulatory requirements;

"(8) the operation of gaming activities on Indian lands has had a significant impact on commerce with foreign nations, and among the several States, and with the Indian tribes; and

"(9) the Constitution vests the Congress with the powers to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, and this Act is enacted in the exercise of those powers.

"SEC. 3. PURPOSES.

"The purposes of this Act are—

"(1) to ensure the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with—

"(A) the inherent sovereign rights of Indian tribes; and

"(B) the decision of the Supreme Court in *California et al. v. Cabazon Band of Mission Indians et al.* (480 U.S.C. 202, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)), involving the Cabazon and Morongo bands of Mission Indians;

"(2) to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development, tribal self-sufficiency, and strong Indian tribal governments;

"(3) to provide a statutory basis for the regulation of gaming activities on Indian lands by an Indian tribe that is adequate to shield those activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

"(4) to provide States with the opportunity to participate in the regulation of certain gaming activities conducted on Indian lands without compelling any action by a State with respect to the regulation of that gaming.";

(3) in section 4—

(A) by redesignating paragraphs (7) and (8) as paragraphs (5) and (6), respectively;

(B) by striking paragraphs (1) through (6) and inserting the following new paragraphs:

"(1) APPLICANT.—The term 'applicant' means any person who applies for a license pursuant to this Act, including any person who applies for a renewal of a license.

"(2) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(3) CHAIRMAN.—The term 'Chairman' means the Chairman of the Commission.

"(4) CLASS I GAMING.—The term 'class I gaming' means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.";

(C) by striking paragraphs (9) and (10); and

(D) by adding after paragraph (6) (as redesignated by subparagraph (A) of this paragraph) the following new paragraphs:

“(7) COMMISSION.—The term ‘Commission’ means the National Indian Gaming Regulatory Commission established under section 5.

“(8) COMPACT.—The term ‘compact’ means an agreement relating to the operation of class III gaming on Indian lands that is entered into by an Indian tribe and a State and that is approved by the Secretary.

“(9) GAMING OPERATION.—The term ‘gaming operation’ means an entity that conducts class II or class III gaming on Indian lands.

“(10) INDIAN LANDS.—The term ‘Indian lands’ means—

“(A) all lands within the limits of any Indian reservation; and

“(B) any lands the title to which is held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

“(11) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community of Indians that—

“(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and

“(B) is recognized as possessing powers of self-government.

“(12) MANAGEMENT CONTRACT.—The term ‘management contract’ means any contract or collateral agreement between an Indian tribe and a contractor, if that contract or agreement provides for the management of all or part of a gaming operation.

“(13) MANAGEMENT CONTRACTOR.—The term ‘management contractor’ means any person entering into a management contract with an Indian tribe or an agent of the Indian tribe for the management of a gaming operation, including any person with a financial interest in that contract.

“(14) NET REVENUES.—With respect to a gaming activity, net revenues shall constitute—

“(A) the annual amount of money wagered; reduced by

“(B)(i) any amounts paid out during the year involved for prizes awarded;

“(ii) the total operating expenses for the year involved (excluding any management fees) associated with the gaming activity; and

“(iii) an allowance for amortization of capital expenses for structures.

“(15) PERSON.—The term ‘person’ means—

“(A) an individual; or

“(B) a firm, corporation, association, organization, partnership, trust, consortium, joint venture, or other nongovernmental entity.

“(16) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.”;

(4) in section 5(b)(3), by striking “At least two members of the Commission shall be enrolled members of any Indian tribe.” and inserting “No fewer than 2 members of the Commission shall be individuals who—

“(A) are each enrolled as a member of an Indian tribe; and

“(B) have extensive experience or expertise in tribal government.”;

(5) by striking sections 6 & 7 and 9 through 16, and redesignating section 8 as section 22 and inserting the following:

“SEC. 6. POWERS AND AUTHORITY OF THE NATIONAL INDIAN GAMING COMMISSION AND CHAIRMAN.

“(a) GENERAL POWERS OF COMMISSION.—

“(1) IN GENERAL.—The Commission shall have the power—

“(A) to approve the annual budget of the Commission;

“(B) to promulgate regulations to carry out the duties of the Commission under this Act in the same manner as an independent establishment (as that term is used in section 104 of title 5, United States Code);

“(C) to establish a rate of fees and assessments, as provided in section 14;

“(D) to conduct investigations, including background investigations;

“(E) to issue a temporary order closing the operation of gaming activities;

“(F) after a hearing, to make permanent a temporary order closing the operation of gaming activities, as provided in section 12;

“(G) to grant, deny, limit, condition, restrict, revoke, or suspend any license issued under any licensing authority conferred upon the Commission pursuant to this Act or fine any person licensed pursuant to this Act for violation of any of the conditions of license under this Act;

“(H) to inspect and examine all premises in which class II or class III gaming is conducted on Indian lands;

“(I) to demand access to and inspect, examine, photocopy, and audit all papers, books, and records of class II and class III gaming activities conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this Act;

“(J) to use the United States mails in the same manner and under the same conditions as any department or agency of the United States;

“(K) to procure supplies, services, and property by contract in accordance with applicable Federal laws;

“(L) to enter into contracts with Federal, State, tribal, and private entities for activities necessary to the discharge of the duties of the Commission;

“(M) to serve, or cause to be served, process or notices of the Commission in a manner provided for by the Commission or in a manner provided for the service of process and notice in civil actions in accordance with the applicable rules of a Federal, State, or tribal court;

“(N) to propound written interrogatories and appoint hearing examiners, to whom may be delegated the power and authority to administer oaths, issue subpoenas, propound written interrogatories, and require testimony under oath;

“(O) to conduct all administrative hearings pertaining to civil violations of this Act (including any civil violation of a regulation promulgated under this Act);

“(P) to collect all fees and assessments authorized by this Act and the regulations promulgated pursuant to this Act;

“(Q) to assess penalties for violations of the provisions of this Act and the regulations promulgated pursuant to this Act;

“(R) to provide training and technical assistance to Indian tribes with respect to all aspects of the conduct and regulation of gaming activities;

“(S) to monitor and, as specifically authorized by this Act, regulate class II and class III gaming;

“(T) to approve all management contracts and gaming-related contracts; and

“(U) in addition to the authorities otherwise specified in this Act, to delegate, by published order or rule, any of the functions of the Commission (including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting on the part of the Commission concerning any work, business, or matter) to a division of the Commission, an individual member of the Commission, an administrative law judge, or an employee of the Commission.

“(2) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to authorize the delegation of the function of rulemaking,

as described in subchapter II of chapter 5 of title 5, United States Code, with respect to general rules (as distinguished from rules of particular applicability), or the promulgation of any other rule.

“(b) RIGHT TO REVIEW DELEGATED FUNCTIONS.—

“(1) IN GENERAL.—With respect to the delegation of any of the functions of the Commission, the Commission shall retain a discretionary right to review the action of any division of the Commission, individual member of the Commission, administrative law judge, or employee of the Commission, upon the initiative of the Commission.

“(2) VOTE NEEDED FOR REVIEW.—The vote of 1 member of the Commission shall be sufficient to bring an action referred to in paragraph (1) before the Commission for review, and the Commission shall ratify, revise, or reject the action under review not later than the last day of the applicable period specified in regulations promulgated by the Commission.

“(3) FAILURE TO CONDUCT REVIEW.—If the Commission declines to exercise the right to that review or fails to exercise that right within the applicable period specified in regulations promulgated by the Commission, the action of any such division of the Commission, individual member of the Commission, administrative law judge, or employee shall, for all purposes, including any appeal or review of that action, be deemed an action of the Commission.

“(c) MINIMUM REQUIREMENTS.—The Commission shall advise the Secretary, as provided in section 8(a), with respect to the establishment of minimum Federal standards—

“(1) for background investigations, licensing of persons, and licensing of gaming operations associated with the conduct or regulation of class II and class III gaming on Indian lands by tribal governments; and

“(2) for the operation of class II and class III gaming activities on Indian lands, including—

“(A) surveillance and security personnel and systems capable of monitoring all gaming activities, including the conduct of games, cashiers’ cages, change booths, count rooms, movements of cash and chips, entrances and exits to gaming facilities, and other critical areas of any gaming facility;

“(B) procedures for the protection of the integrity of the rules for the play of games and controls related to those rules;

“(C) credit and debit collection controls;

“(D) controls over gambling devices and equipment; and

“(E) accounting and auditing.

“(d) COMMISSION ACCESS TO INFORMATION.—

“(1) IN GENERAL.—The Commission may secure from any department or agency of the United States information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission.

“(2) INFORMATION TRANSFER.—The Commission may secure from any law enforcement agency or gaming regulatory agency of any State, Indian tribe, or foreign nation information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairman, the head of any State or tribal law enforcement agency shall furnish that information to the Commission.

“(3) PRIVILEGED INFORMATION.—Notwithstanding sections 552 and 552a of title 5, United States Code, the Commission shall protect from disclosure information provided by Federal, State, tribal, or international law enforcement or gaming regulatory agencies.

“(4) LAW ENFORCEMENT AGENCY.—For purposes of this subsection, the Commission shall be considered to be a law enforcement agency.

“(e) INVESTIGATIONS AND ACTIONS.—

“(1) IN GENERAL.—

“(A) POSSIBLE VIOLATIONS.—The Commission may, as specifically authorized by this Act, conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating, or is conspiring to violate any provision of this Act (including any rule or regulation promulgated under this Act). The Commission may require or permit any person to file with the Commission a statement in writing, under oath, or otherwise, as the Commission may determine, concerning all relevant facts and circumstances regarding the matter under investigation by the Commission pursuant to this subsection.

“(B) ADMINISTRATIVE INVESTIGATIONS.—The Commission may, as specifically authorized by this Act, investigate such facts, conditions, practices, or matters as the Commission considers necessary or proper to aid in—

“(i) the enforcement of any provision of this Act;

“(ii) issuing rules and regulations under this Act; or

“(iii) securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

“(2) ADMINISTRATIVE AUTHORITIES.—

“(A) IN GENERAL.—

“(i) ADMINISTRATION OF CERTAIN DUTIES.—For the purpose of any investigation or any other proceeding conducted under this Act, an individual described in clause (ii) is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission considers relevant or material to the inquiry. The attendance of those witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing.

“(ii) INDIVIDUALS DESCRIBED.—An individual described in this clause is—

“(I) any member of the Commission who is designated by the Commission to carry out duties specified in clause (i); or

“(II) any other officer of the Commission who is designated by the Commission to carry out duties specified in clause (i).

“(B) REQUIRING APPEARANCES OR TESTIMONY.—In case of contumacy by, or refusal to obey any subpoena issued to, any person, the Commission may invoke the jurisdiction of any court of the United States within the jurisdiction of which an investigation or proceeding is carried on, or where that person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records.

“(C) COURT ORDERS.—Any court described in subparagraph (B) may issue an order requiring that person to appear before the Commission, a member of the Commission, or an officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question, and any failure to obey that order of the court may be punished by that court as a contempt of that court.

“(3) ENFORCEMENT.—

“(A) IN GENERAL.—If the Commission determines that any person is engaged, has engaged, or is conspiring to engage in any act or practice constituting a violation of any provision of this Act (including any rule or

regulation promulgated under this Act), the Commission may—

“(i) bring an action in the appropriate district court of the United States or the United States District Court for the District of Columbia to enjoin that act or practice, and upon a proper showing, the court shall grant, without bond, a permanent or temporary injunction or restraining order; or

“(ii) transmit such evidence as may be available concerning that act or practice as may constitute a violation of any Federal criminal law to the Attorney General, who may institute the necessary criminal or civil proceedings.

“(B) STATUTORY CONSTRUCTION.—

“(i) IN GENERAL.—The authority of the Commission to conduct investigations and take actions under subparagraph (A) may not be construed to affect in any way the authority of any other agency or department of the United States to carry out statutory responsibilities of that agency or department.

“(ii) EFFECT OF TRANSMITTAL BY THE COMMISSION.—The transmittal by the Commission pursuant to subparagraph (A)(ii) may not be construed to constitute a condition precedent with respect to any action taken by any department or agency referred to in clause (i).

“(4) WRITS, INJUNCTIONS, AND ORDERS.—Upon application of the Commission, each district court of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of this Act (including any rule or regulation promulgated under this Act).

“(f) POWERS OF THE CHAIRPERSON.—The Chairman shall have such powers as may be delegated to the Chairman by the Commission.

“SEC. 7. REGULATORY FRAMEWORK.

“(a) CLASS II GAMING.—For class II gaming, Indian tribes shall retain the right of those tribes, in a manner that meets or exceeds minimum Federal standards described in section 6(c) (that are established by the Secretary under section 8)—

“(1) to monitor and regulate that gaming;

“(2) to conduct background investigations; and

“(3) to establish and regulate internal control systems.

“(b) CLASS III GAMING CONDUCTED UNDER A COMPACT.—For class III gaming conducted under the authority of a compact entered into pursuant to section 10, an Indian tribe or a State, or both, as provided in a compact or by tribal ordinance or resolution, shall, in a manner that meets or exceeds minimum Federal standards described in section 6(c) (that are established by the Secretary under section 8)—

“(1) monitor and regulate gaming;

“(2) conduct background investigations; and

“(3) establish and regulate internal control systems.

“(c) VIOLATIONS OF MINIMUM FEDERAL STANDARDS.—

“(1) CLASS II GAMING.—In any case in which an Indian tribe that regulates or conducts class II gaming on Indian lands substantially fails to meet minimum Federal standards for that gaming, after providing the Indian tribe notice and reasonable opportunity to cure violations and to be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems relating to class II gaming conducted by the Indian tribe. That authority of the Commission may be exclusive until such time as the regulatory and internal control systems of the

Indian tribe meet or exceed the minimum Federal standards concerning regulatory, licensing, or internal control requirements established by the Secretary, in consultation with the Commission, for that gaming.

“(2) CLASS III GAMING.—In any case in which an Indian tribe or a State (or both) that regulates class III gaming on Indian lands fails to meet or enforce minimum Federal standards for class III gaming, after providing notice and reasonable opportunity to cure violations and be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems relating to class III gaming conducted by the Indian tribe. That authority of the Commission may be exclusive until such time as the regulatory or internal control systems of the Indian tribe or the State (or both) meet or exceed the minimum Federal regulatory, licensing, or internal control requirements established by the Secretary, in consultation with the Commission, for that gaming.

“SEC. 8. NEGOTIATED RULEMAKING.

“(a) IN GENERAL.—Subject to subsection (b), not later than 180 days after the date of enactment of the Indian Gaming Regulatory Improvement Act of 1998, the Secretary shall, in cooperation with Indian tribes, and in accordance with the negotiated rulemaking procedures under subchapter III of chapter 5 of title 5, United States Code, promulgate minimum Federal standards relating to background investigations, internal control systems, and licensing standards (as described in section 6(c)).

“(b) NEGOTIATED RULEMAKING COMMITTEE.—The negotiated rulemaking committee established under subchapter III of chapter 5 of title 5, United States Code, to carry out subsection (a) shall be established by the Secretary, in consultation with the Attorney General and the Commission.

“(c) FACTORS FOR CONSIDERATION.—While the minimum Federal standards established pursuant to this section may be developed with due regard for existing industry standards, the Secretary and the negotiated rulemaking committee established under subsection (b), in promulgating standards pursuant to this section, shall also consider—

“(1) the unique nature of tribal gaming as compared to commercial gaming, other governmental gaming, and charitable gaming;

“(2) the broad variations in the scope and size of tribal gaming activity;

“(3) the inherent sovereign rights of Indian tribes with respect to regulating their own affairs;

“(4) the findings and purposes set forth in sections 2 and 3;

“(5) the effectiveness and efficiency of a national licensing program for vendors or management contractors; and

“(6) other matters that are not inconsistent with the purposes of this Act.

“SEC. 9. REQUIREMENTS FOR THE CONDUCT OF CLASS I AND CLASS II GAMING ON INDIAN LANDS.

“(a) CLASS I GAMING.—Class I gaming on Indian lands shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

“(b) CLASS II GAMING.—

“(1) IN GENERAL.—Any class II gaming on Indian lands shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

“(2) LEGAL ACTIVITIES.—An Indian tribe may engage in, and license and regulate, class II gaming on Indian lands within the jurisdiction of that Indian tribe, if—

“(A) such Indian gaming is located within a State that permits such gaming for any

purpose by any person, organization, or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law); and

“(B) such Indian gaming meets or exceeds the requirements of this section and the standards described in section 6(c) (that are established by the Secretary under section 8).

“(3) REQUIREMENTS FOR CLASS II GAMING OPERATIONS.—

“(A) IN GENERAL.—The Commission shall ensure that, with regard to any class II gaming operation on Indian lands—

“(i) a separate license is issued by the Indian tribe for each place, facility, or location on Indian lands at which that Indian gaming is conducted;

“(ii) the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any class II gaming, unless the conditions of clause (ix) apply;

“(iii) the net revenues from any class II gaming activity are used only—

“(I) to fund tribal government operations or programs;

“(II) to provide for the general welfare of the Indian tribe and the members of the Indian tribe;

“(III) to promote tribal economic development;

“(IV) to donate to charitable organizations;

“(V) to help fund operations of local government agencies;

“(VI) to comply with the provisions of section 14; or

“(VII) to make per capita payments to members of the Indian tribe pursuant to clause (viii);

“(iv) the Indian tribe provides to the Commission annual outside audit reports of the class II gaming operation of the Indian tribe, which may be encompassed within existing independent tribal audit systems;

“(v) each contract for supplies, services, or concessions for a contract amount equal to more than \$100,000 per year, other than a contract for professional legal or accounting services, relating to that gaming is subject to those independent audit reports and any audit conducted by the Commission;

“(vi) the construction and maintenance of a class II gaming facility and the operation of class II gaming are conducted in a manner that adequately protects the environment and public health and safety;

“(vii) there is instituted an adequate system that—

“(I) ensures that—

“(aa) background investigations are conducted on primary management officials, key employees, and persons having material control, either directly or indirectly, in a licensed class II gaming operation, and gaming-related contractors associated with a licensed class II gaming operation; and

“(bb) oversight of those officials and the management by those officials is conducted on an ongoing basis; and

“(II) includes—

“(aa) tribal licenses for persons involved in class II gaming operations, issued in accordance with the standards described in section 6(c) (that are established by the Secretary under section 8);

“(bb) a standard under which any person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment or licensure; and

“(cc) notification by the Indian tribe to the Commission of the results of that back-

ground investigation before the issuance of any such license;

“(viii) net revenues from any class II gaming activities conducted or licensed by any Indian tribal government are used to make per capita payments to members of the Indian tribe only if—

“(I) the Indian tribe has prepared a plan to allocate revenues to uses authorized by clause (iii);

“(II) the Secretary determines that the plan is adequate, particularly with respect to uses described in subclause (I) or (III) of clause (iii);

“(III) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved;

“(IV) the per capita payments to minors and other legally incompetent persons are disbursed to the parents or legal guardians of those minors or legally incompetent persons in such amounts as may be necessary for the health, education, or welfare of each such minor or legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

“(V) the per capita payments are subject to Federal income taxation for individuals and Indian tribes withhold those taxes when those payments are made;

“(ix) a separate license is issued by the Indian tribe for any class II gaming operation owned by any person or entity other than the Indian tribe and conducted on Indian lands, that includes—

“(I) requirements set forth in clauses (v) through (vii) (other than the requirements of clauses (vii)(II)(cc) and (x)); and

“(II) requirements that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which those Indian lands are located; and

“(x) no person or entity, other than the Indian tribe, is eligible to receive a tribal license for a class II gaming operation conducted on Indian lands within the jurisdiction of the Indian tribe if that person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

“(B) TRANSITION.—

“(i) IN GENERAL.—Clauses (ii), (iii), and (ix) of subparagraph (A) shall not bar the continued operation of a class II gaming operation described in clause (ix) of that subparagraph that was operating on September 1, 1986, if—

“(I) that gaming operation is licensed and regulated by an Indian tribe;

“(II) income to the Indian tribe from that gaming is used only for the purposes described in subparagraph (A)(iii);

“(III) not less than 60 percent of the net revenues from that gaming operation is income to the licensing Indian tribe; and

“(IV) the owner of that gaming operation pays an appropriate assessment to the Commission pursuant to section 14 for the regulation of that gaming.

“(ii) LIMITATIONS ON EXEMPTION.—The exemption from application provided under clause (i) may not be transferred to any person or entity and shall remain in effect only during such period as the gaming operation remains within the same nature and scope as that gaming operation was actually operated on October 17, 1988.

“(C) LIST.—The Commission shall—

“(i) maintain a list of each gaming operation that is subject to subparagraph (B); and

“(ii) publish that list in the Federal Register.

“(c) PETITION FOR CERTIFICATE OF SELF-REGULATION.—

“(1) IN GENERAL.—Any Indian tribe that operates, directly or with a management con-

tract, a class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe—

“(A) has continuously conducted that gaming activity for a period of not less than 3 years, including a period of not less than 1 year that begins after the date of enactment of the Indian Gaming Regulatory Improvement Act of 1998; and

“(B) has otherwise complied with the provisions of this Act.

“(2) ISSUANCE OF CERTIFICATE OF SELF-REGULATION.—The Commission shall issue a certificate of self-regulation under this subsection if the Commission determines, on the basis of available information, and after a hearing if requested by the Indian tribe, that the Indian tribe has—

“(A) conducted its gaming activity in a manner that has—

“(i) resulted in an effective and honest accounting of all revenues;

“(ii) resulted in a reputation for safe, fair, and honest operation of the activity; and

“(iii) been generally free of evidence of criminal activity;

“(B) adopted and implemented adequate systems for—

“(i) accounting for all revenues from the gaming activity;

“(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

“(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations;

“(C) conducted the operation on a fiscally and economically sound basis; and

“(D) paid all fees and assessments that the Indian tribe is required to pay to the Commission under this Act.

“(3) EFFECT OF CERTIFICATE OF SELF-REGULATION.—During the period in which a certificate of self-regulation issued under this subsection is in effect with respect to a gaming activity conducted by an Indian tribe—

“(A) the Indian tribe shall—

“(i) submit an annual independent audit report as required by subsection (b)(3)(A)(iv); and

“(ii) submit to the Commission a complete résumé of each employee hired and licensed by the Indian tribe subsequent to the issuance of a certificate of self-regulation; and

“(B) the Commission may not assess a fee under section 15 on gaming operated by the Indian tribe pursuant to paragraph (1) in excess of 0.25 percent of the net revenue from that class II gaming activity.

“(4) RESCISSION.—The Commission may, for just cause and after a reasonable opportunity for a hearing, rescind a certificate of self-regulation issued under this subsection by majority vote of the members of the Commission.

“(d) LICENSE REVOCATION.—If, after the issuance of any license by an Indian tribe under this section, the Indian tribe receives reliable information from the Commission indicating that a licensee does not meet any standard described in section 6(c) (that is established by the Secretary under section 8), or any other applicable regulation promulgated under this Act, the Indian tribe—

“(1) shall immediately suspend that license; and

“(2) after providing notice, holding a hearing, and making findings of fact under procedures established pursuant to applicable tribal law, may revoke that license.

“SEC. 10. CLASS III GAMING ON INDIAN LANDS.

“(a) REQUIREMENTS FOR THE CONDUCT OF CLASS III GAMING ON INDIAN LANDS.—

“(1) IN GENERAL.—Class III gaming activities shall be lawful on Indian lands only if those activities are—

“(A) authorized by a compact that—

“(i) is approved pursuant to tribal law by the governing body of the Indian tribe having jurisdiction over those lands;

“(ii) meets the requirements of this section 9(b)(3) for the conduct of class II gaming activities; and

“(iii) is approved by the Secretary;

“(B) located in a State that permits such gaming for any purpose by any person, organization or entity; and

“(C) conducted in conformance with a compact that—

“(i) is in effect; and

“(ii) is—

“(I) entered into by an Indian tribe and a State and approved by the Secretary under paragraph (2); or

“(II) issued by the Secretary under paragraph (2).

“(2) COMPACT NEGOTIATIONS; APPROVAL.—

“(A) IN GENERAL.—

“(i) COMPACT NEGOTIATIONS.—Any Indian tribe having jurisdiction over the lands upon which a class III gaming activity is to be conducted may request the State in which those lands are located to enter into negotiations for the purpose of entering into a compact with that State governing the conduct of class III gaming activities.

“(ii) REQUIREMENTS FOR REQUEST FOR NEGOTIATIONS.—A request for negotiations under clause (i) shall be in writing and shall specify each gaming activity that the Indian tribe proposes for inclusion in the compact. Not later than 30 days after receipt of that written request, the State shall respond to the Indian tribe.

“(iii) COMMENCEMENT OF COMPACT NEGOTIATIONS.—Compact negotiations conducted under this paragraph shall commence not later than 30 days after the date on which a response by a State is due to the Indian tribe, and shall be completed not later than 120 days after the initiation of compact negotiations, unless the State and the Indian tribe agree to a different period of time for the completion of compact negotiations.

“(B) NEGOTIATIONS.—

“(i) IN GENERAL.—The Secretary shall, upon the request of an Indian tribe described in subparagraph (A)(i) that has not reached an agreement with a State concerning a compact referred to in that subparagraph (or with respect to an Indian tribe described in clause (ii)(I)(bb) a compact) during the applicable period under clause (ii) of this subparagraph, initiate a mediation process to—

“(I) conclude a compact referred to in subparagraph (A)(i); or

“(II) if necessary, provide for the issuance of procedures by the Secretary to govern the conduct of the gaming referred to in that subparagraph.

“(ii) APPLICABLE PERIOD.—

“(I) IN GENERAL.—Subject to subclause (II), the applicable period described in this paragraph is—

“(aa) in the case of an Indian tribe that makes a request for compact negotiations under subparagraph (A), the 180-day period beginning on the date on which that Indian tribe makes the request; and

“(bb) in the case of an Indian tribe that makes a request to renew a compact to govern class III gaming activity on Indian lands of that Indian tribe within the State that the Indian tribe entered into prior to the date of enactment of the Indian Gaming Regulatory Improvement Act of 1998, during the 60-day period beginning on the date of that request.

“(II) EXTENSION.—An Indian tribe and a State may agree to extend an applicable period under this paragraph beyond the applicable termination date specified in item (aa) or (bb) of subclause (I).

“(iii) MEDIATION.—

“(I) IN GENERAL.—The Secretary shall initiate mediation to conclude a compact governing the conduct of class III gaming activities on Indian lands upon a showing by an Indian tribe that, within the applicable period specified in clause (ii), a State has failed—

“(aa) to respond to a request by an Indian tribe for negotiations under this subparagraph; or

“(bb) to negotiate in good faith.

“(II) EFFECT OF DECLINING NEGOTIATIONS.—The Secretary shall initiate mediation immediately after a State declines to enter into negotiations under this subparagraph, without regard to whether the otherwise applicable period specified in clause (ii) has expired.

“(III) COPY OF REQUEST.—An Indian tribe that requests mediation under this clause shall provide the State that is the subject of the mediation request a copy of the mediation request submitted to the Secretary.

“(IV) PANEL.—The Secretary, in consultation with the Indian tribes and States, shall establish a list of independent mediators, that the Secretary, in consultation with the Indian tribes and the States, shall periodically update.

“(V) NOTIFICATION BY STATE.—Not later than 10 days after an Indian tribe makes a request to the Secretary for mediation under subclause (I), the State that is the subject of the mediation request shall notify the Secretary whether the State elects to participate in the mediation process. If the State elects to participate in the mediation, the mediation shall be conducted in accordance with subclause (VI). If the State declines to participate in the mediation process, the Secretary shall issue procedures under clause (iv).

“(VI) MEDIATION PROCESS.—

“(aa) IN GENERAL.—Not later than 20 days after a State elects under subclause (V) to participate in a mediation, the Secretary shall submit to the Indian tribe and the State the names of 3 mediators randomly selected by the Secretary from the list of mediators established under subclause (IV).

“(bb) SELECTION OF MEDIATOR.—Not later than 10 days after the Secretary submits the mediators referred to in item (aa), the Indian tribe and the State may elect to have the Secretary remove a mediator from the mediators submitted. If the parties referred to in the preceding sentences fail to remove 2 mediators, the Secretary shall remove such names as may be necessary to result in the removal of 2 mediators. The remaining mediator shall conduct the mediation.

“(cc) INITIAL PERIOD OF MEDIATION.—The mediator shall, during the 60-day period beginning on the date on which the mediator is selected under item (bb) (or a longer period on the agreement of the parties referred to in that item for an extension of the period) attempt to achieve a compact.

“(dd) LAST-BEST-OFFER.—If by the termination of the period specified in item (cc), no agreement for concluding a compact is achieved by the parties to the mediation, each such party may, not later than 10 days after that date, submit to the mediator an offer that represents the best offer that the party intends to make for achieving an agreement for concluding a compact (referred to in this item as a ‘last-best-offer’). The mediator shall review a last-best-offer received under this item not later than 30 days after the date of submission of the offer.

“(ee) REPORT BY MEDIATOR.—Not later than the date specified for the completion of a review of a last-best-offer under item (dd), or in any case in which either party in a mediation fails to make such an offer, the date that is 10 days after the termination of the initial period of mediation under item (cc),

the mediator shall prepare and submit to the Secretary a report that includes the contentions of the parties, the conclusions of the mediator concerning the permissible scope of gaming on the Indian lands involved, and recommendations for the operation and regulation of gaming on the Indian lands in accordance with this Act.

“(ff) FINAL DETERMINATIONS.—Not later than 60 days after receiving a report from a mediator under item (ee), the Secretary shall make a final determination concerning the operation and regulation of the class III gaming that is the subject of the mediation.

“(iv) PROCEDURES.—Subject to clause (v), the Secretary shall issue procedures for the operation and regulation of the class III gaming described in that item by the date that is 180 days after the date specified in clause (iii)(V) or upon the determination described in clause (iii)(iv)(ff).

“(v) PROHIBITION.—No compact negotiated, or procedures issued, under this subparagraph shall require that a State undertake any regulation of gaming on Indian lands unless—

“(I) the State affirmatively consents to regulate that gaming; and

“(II) applicable State laws permit that regulatory function.

“(C) MANDATORY DISAPPROVAL.—Notwithstanding any other provision of this Act, the Secretary may not approve a compact if the compact requires State regulation of Indian gaming absent the consent of the State or the Indian tribe.

“(D) EFFECTIVE DATE OF COMPACT OF PROCEDURES.—Any compact negotiated, or procedures issued, under this subsection shall become effective upon the publication of the compact or procedures in the Federal Register by the Secretary.

“(E) EFFECT OF PUBLICATION OF COMPACT.—Except for an appeal conducted under subchapter II of chapter 5 of title 5, United States Code, by an Indian tribe or a State associated with the compact, the publication of a compact pursuant to subparagraph (B) shall, for the purposes of this Act, be conclusive evidence that the class III gaming subject to the compact is an activity subject to negotiations under the laws of the State where the gaming is to be conducted, in any matter under consideration by the Commission or a Federal court.

“(F) DUTIES OF COMMISSION.—Consistent with the requirements of the standards described in section 6(c) (that are established by the Secretary under section 8) and the requirements of section 7, the Commission shall monitor and, if specifically authorized by those standards and section 7, regulate and license class III gaming with respect to any compact that is approved by the Secretary under this subsection and published in the Federal Register.

“(3) PROVISIONS OF COMPACTS.—

“(A) IN GENERAL.—A compact negotiated under this subsection may only include provisions relating to—

“(i) the application of the criminal and civil laws (including regulations) of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of that gaming activity in a manner consistent with the requirements of the standards described in section 6(c) (that are established by the Secretary under section 8) and section 7;

“(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of those laws (including regulations);

“(iii) the assessment by the State of the costs associated with those activities in such amounts as are necessary to defray the costs of regulating that activity;

“(iv) taxation by the Indian tribe of that activity in amounts comparable to amounts assessed by the State for comparable activities;

“(v) remedies for breach of compact provisions;

“(vi) standards for the operation of that activity and maintenance of the gaming facility, including licensing, in a manner consistent with the requirements of the standards described in section 6(c) (that are established by the Secretary under section 8) and section 7; and

“(vii) any other subject that is directly related to the operation of gaming activities.

“(B) STATUTORY CONSTRUCTION WITH RESPECT TO ASSESSMENTS; PROHIBITION.—

“(i) STATUTORY CONSTRUCTION.—Except for any assessments for services agreed to by an Indian tribe in compact negotiations, nothing in this section may be construed as conferring upon a State, or any political subdivision thereof, the authority to impose any tax, fee, charge, or other assessment upon an Indian tribe, an Indian gaming operation or the value generated by the gaming operation, or any person or entity authorized by an Indian tribe to engage in a class III gaming activity in conformance with this Act.

“(ii) ASSESSMENT BY STATES.—A State may assess the assessments agreed to by an Indian tribe referred to in clause (i) in a manner consistent with that clause.

“(4) STATUTORY CONSTRUCTION WITH RESPECT TO CERTAIN RIGHTS OF INDIAN TRIBES.—Nothing in this subsection impairs the right of an Indian tribe to regulate class III gaming on the Indian lands of the Indian tribe concurrently with a State and the Commission, except to the extent that such regulation is inconsistent with, or less stringent than, this Act or any laws (including regulations) made applicable by any compact entered into by the Indian tribe under this subsection that is in effect.

“(5) EXEMPTION.—The provisions of section 2 of the Act of January 2, 1951 (commonly referred to as the ‘Gambling Devices Transportation Act’) (64 Stat. 1134, chapter 1194; 15 U.S.C. 1175) shall not apply to any class II gaming activity or any gaming activity conducted pursuant to a compact entered into after the date of enactment of this Act, but in no event shall this paragraph be construed as invalidating any exemption from the provisions of such section 2 for any compact entered into prior to the date of enactment of this Act.

“(b) JURISDICTION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.—The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the Secretary, the Commission, a State, or an Indian tribe to enforce any provision of a compact entered into under subsection (a) or to enjoin a class III gaming activity located on Indian lands and conducted in violation of any compact that is in effect and that was entered into under subsection (a).

“(c) APPROVAL OF COMPACTS.—

“(1) IN GENERAL.—The Secretary may approve any compact between an Indian tribe and a State governing the conduct of class III gaming on Indian lands of that Indian tribe entered into under subsection (a).

“(2) REASONS FOR DISAPPROVAL BY SECRETARY.—The Secretary may disapprove a compact entered into under subsection (a) only if that compact violates any—

“(A) provision of this Act or any regulation promulgated by the Commission pursuant to this Act;

“(B) other provision of Federal law; or

“(C) trust obligation of the United States to Indians.

“(3) EFFECT OF FAILURE TO ACT ON COMPACT.—If the Secretary fails to approve or

disapprove a compact entered into under subsection (a) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act and the regulations promulgated by the Commission pursuant to this Act.

“(4) NOTIFICATION.—The Secretary shall publish in the Federal Register notice of any compact that is approved, or considered to have been approved, under this subsection.

“(d) REVOCATION OF ORDINANCE.—

“(1) IN GENERAL.—The governing body of an Indian tribe, in its sole discretion, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. That revocation shall render class III gaming illegal on the Indian lands of that Indian tribe.

“(2) PUBLICATION OF REVOCATION.—An Indian tribe shall submit any revocation ordinance or resolution described in paragraph (1) to the Commission. The Commission shall publish that ordinance or resolution in the Federal Register. The revocation provided by that ordinance or resolution shall take effect on the date of that publication.

“(3) CONDITIONAL OPERATION.—Notwithstanding any other provision of this subsection—

“(A) any person or entity operating a class III gaming activity pursuant to this Act on the date on which an ordinance or resolution described in paragraph (1) that revokes authorization for that class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which that revocation, ordinance, or resolution is published under paragraph (2), continue to operate that activity in conformance with an applicable compact entered into under subsection (a) that is in effect; and

“(B) any civil action that arises before, and any crime that is committed before, the termination of that 1-year period shall not be affected by that revocation ordinance, or resolution.

“(e) CERTAIN CLASS III GAMING ACTIVITIES.—

“(1) COMPACTS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY IMPROVEMENT ACT OF 1998.—Class III gaming activities that are authorized under a compact approved or issued by the Secretary under the authority of this Act prior to the date of enactment of the Indian Gaming Regulatory Improvement Act of 1998 shall, during such period as the compact is in effect, remain lawful for the purposes of this Act, notwithstanding the Indian Gaming Regulatory Improvement Act of 1998 and the amendments made by that Act or any change in State law, other than a change in State law that constitutes a change in the public policy of the State with respect to permitting or prohibiting class III gaming in the State.

“(2) COMPACT ENTERED INTO AFTER THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY IMPROVEMENT ACT OF 1998.—Any compact entered into under subsection (a) after the date specified in paragraph (1) shall remain lawful for the purposes of this Act, notwithstanding any change in State law, other than a change in State law that constitutes a change in the public policy of the State with respect to with respect to permitting or prohibiting class III gaming in the State.

“SEC. 11. REVIEW OF CONTRACTS.

“(a) CONTRACTS INCLUDED.—The Commission shall, in accordance with this section,

review and approve or disapprove any management contract for the operation and management of any gaming activity that an Indian tribe may engage in under this Act.

“(b) MANAGEMENT CONTRACT REQUIREMENTS.—The Commission shall approve any management contract between an Indian tribe and a person licensed by an Indian tribe or the Commission that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

“(1) adequate accounting procedures that are maintained, and verifiable financial reports that are prepared, by or for the governing body of the Indian tribe on a monthly basis;

“(2) access to the daily gaming operations by appropriate officials of the Indian tribe who shall have the right to verify the daily gross revenues and income derived from any gaming activity;

“(3) a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs;

“(4) an agreed upon ceiling for the repayment of any development and construction costs;

“(5) a contract term of not to exceed 5 years, except that, upon the request of an Indian tribe, the Commission may authorize a contract term that exceeds 5 years but does not exceed 7 years if the Commission is satisfied that the capital investment required, and the income projections for, the particular gaming activity require the additional time; and

“(6) grounds and mechanisms for the termination of the contract, but any such termination shall not require the approval of the Commission.

“(c) MANAGEMENT FEE BASED ON PERCENTAGE OF NET REVENUES.—

“(1) PERCENTAGE FEE.—The Commission may approve a management contract that provides for a fee that is based on a percentage of the net revenues of a tribal gaming activity if the Commission determines that such percentage fee is reasonable, taking into consideration surrounding circumstances.

“(2) FEE AMOUNT.—Except as provided in paragraph (3), a fee described in paragraph (1) shall not exceed an amount equal to 30 percent of the net revenues described in that paragraph.

“(3) EXCEPTION.—Upon the request of an Indian tribe, if the Commission is satisfied that the capital investment required, and income projections for, a tribal gaming activity, necessitate a fee in excess of the amount specified in paragraph (2), the Commission may approve a management contract that provides for a fee described in paragraph (1) in an amount in excess of the amount specified in paragraph (2), but not to exceed 40 percent of the net revenues described in paragraph (1).

“(d) TIME PERIOD FOR REVIEW.—

“(1) IN GENERAL.—Except as provided in paragraph (2), not later than 90 days after the date on which a management contract is submitted to the Commission for approval, the Commission shall approve or disapprove that contract on the merits of the contract.

“(2) EXTENSION.—The Commission may extend the 90-day period for an additional period of not more than 45 days if the Commission notifies the Indian tribe in writing of the reason for the extension of the period.

“(3) ACTION.—The Indian tribe may bring an action in the United States District Court for the District of Columbia to compel action by the Commission if a contract has not been approved or disapproved by the termination date of an applicable period under this subsection.

“(e) CONTRACT MODIFICATIONS AND VOID CONTRACTS.—The Commission, after providing notice and a hearing on the record—

“(1) shall have the authority to require appropriate contract modifications to ensure compliance with the provisions of this Act; and

“(2) may declare invalid any contract regulated by the Commission under this Act if the Commission determines that any provision of this Act has been violated by the terms of the contract.

“(f) INTERESTS IN REAL PROPERTY.—No contract regulated by this Act may transfer or, in any other manner, convey any interest in land or other real property, unless—

“(1) specific statutory authority exists; (2) all necessary approvals for the transfer or conveyance have been obtained; and (3) the transfer or conveyance is clearly specified in the contract.

“(g) AUTHORITY OF THE SECRETARY.—The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) shall not extend to any contract or agreement that is regulated pursuant to this Act.

“(h) DISAPPROVAL OF CONTRACTS.—The Commission may not approve a management contract or other gaming-related contract if the Commission determines that—

“(1) any person having a direct financial interest in, or management responsibility for, that contract, and, in the case of a corporation, any individual who serves on the board of directors of that corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock—

“(A) is an elected member of the governing body of the Indian tribe that is a party to the contract;

“(B) has been convicted of any felony or gaming offense;

“(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded by the Commission; or

“(D) has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming, or the carrying on of the business and financial arrangements incidental thereto;

“(2) the contractor— (A) has unduly interfered or influenced for its gain or advantage any decision or process of tribal government relating to the gaming activity; or

“(B) has attempted to interfere or influence a decision pursuant to subparagraph (A);

“(3) the contractor has deliberately or substantially failed to comply with the terms of the contract; or

“(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

“SEC. 12. CIVIL PENALTIES.

“(a) AMOUNT.—Any person who commits any act or causes to be done any act that violates any provision of this Act or any rule or regulation promulgated under this Act, or who fails to carry out any act or causes the failure to carry out any act that is required by any such provision of law shall be subject to a civil penalty in an amount equal to not more than \$25,000 per day for each such violation.

“(b) ASSESSMENT AND COLLECTION.—

“(1) IN GENERAL.—Each civil penalty assessed under this section shall be assessed by

the Commission and collected in a civil action brought by the Attorney General on behalf of the United States. Before the Commission refers civil penalty claims to the Attorney General, the Commission may compromise the civil penalty after affording the person charged with a violation referred to in subsection (a), an opportunity to present views and evidence in support of that action by the Commission to establish that the alleged violation did not occur.

“(2) PENALTY AMOUNT.—In determining the amount of a civil penalty assessed under this section, the Commission shall take into account—

“(A) the nature, circumstances, extent, and gravity of the violation committed;

“(B) with respect to the person found to have committed that violation, the degree of culpability, any history of prior violations, ability to pay, and the effect on ability to continue to do business; and

“(C) such other matters as justice may require.

“(c) TEMPORARY CLOSURES.—

“(1) IN GENERAL.—The Commission may order the temporary closure of all or part of an Indian gaming operation for a substantial violation of any provision of law referred to in subsection (a).

“(2) HEARING ON ORDER OF TEMPORARY CLOSURE.—

“(A) IN GENERAL.—Not later than 10 days after the issuance of an order of temporary closure, the Indian tribe or the individual owner of a gaming operation shall have the right to request a hearing on the record before the Commission to determine whether that order should be made permanent or dissolved.

“(B) DEADLINES RELATING TO HEARING.—Not later than 30 days after a request for a hearing is made under subparagraph (A), the Commission shall conduct that hearing. Not later than 30 days after the termination of the hearing, the Commission shall render a final decision on the closure.

“SEC. 13. JUDICIAL REVIEW.

“A decision made by the Commission pursuant to section 6, 7, 11, or 12 shall constitute a final agency decision for purposes of appeal to the United States District Court for the District of Columbia pursuant to chapter 7 of title 5, United States Code.”;

(6) by redesignating sections 18 and 19 as sections 14 and 15, respectively;

(7) in section 14, as redesignated—

(A) in subsection (a)—

(i) by striking paragraphs (3) through (6);

(ii) by redesignating paragraph (2) as paragraph (3);

(iii) by striking “(a)(1) The Commission” and inserting the following:

“(2) MINIMUM FEES.—The Commission”;

(iv) by inserting before paragraph (2) the following:

“(a) ANNUAL FEES.—

“(1) MINIMUM REGULATORY FEES.—In addition to assessing fees pursuant to a schedule established under paragraph (2), the Commission shall require each gaming operation that conducts a class II or class III gaming activity that is regulated by this Act to pay to the Commission, on a quarterly basis, a minimum fee in an amount equal to \$250.”; and

(v) in paragraph (3), as redesignated, by striking subparagraphs (B) and (C) and inserting the following:

“(B) GRADUATED FEE LIMITATION.—

“(i) IN GENERAL.—The aggregate amount of fees collected under this paragraph shall not exceed—

“(I) \$8,000,000 for fiscal year 1999;

“(II) \$9,000,000 for fiscal year 2000; and

“(III) \$11,000,000 for fiscal year 2001, and for each fiscal year thereafter.

“(C) FACTORS FOR CONSIDERATION.—

“(i) IN GENERAL.—The aggregate amount of fees assessed under this section shall be reasonably related to the costs of services provided by the Commission to Indian tribes under this Act (including the cost of issuing regulations necessary to carry out this Act). In assessing and collecting fees under this section, the Commission shall take into account all of the duties of, and services provided by, the Commission under this Act.

“(ii) FACTORS FOR CONSIDERATION.—In determining the amount of fees to be assessed against class II or class III gaming activities regulated by this Act, the Commission shall consider the extent of regulation of gaming activities by States and Indian tribes and shall, if appropriate, reduce or eliminate the fees authorized by this section.

“(iii) CONSULTATION.—In establishing any schedule of fees under this subsection, the Commission shall consult with Indian tribes.

“(4) TRUST FUND.—

“(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Indian Gaming Trust Fund (referred to in this paragraph as the ‘Trust Fund’), consisting of—

“(i) such amounts as are—

“(I) transferred to the Trust Fund under subparagraph (B)(i); or

“(II) appropriated to the Trust Fund; and

“(ii) any interest earned on the investment of amounts in the Trust Fund under subparagraph (C).

“(B) TRANSFER OF AMOUNTS EQUIVALENT TO FEES.—

“(i) IN GENERAL.—The Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the aggregate amount of fees collected under this subsection.

“(ii) TRANSFERS BASED ON ESTIMATES.—The amounts required to be transferred to the Trust Fund under clause (i) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

“(C) INVESTMENTS.—

“(i) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. The Secretary of the Treasury shall invest the amounts deposited under subparagraph (A) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

“(ii) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund, except special obligations issued exclusively to the Trust Fund, may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

“(iii) CREDITS TO TRUST FUND.—The interest on, and proceeds from, the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

“(D) EXPENDITURES FROM TRUST FUND.—

“(i) IN GENERAL.—Amounts in the Trust Fund shall be available, as provided in appropriations Acts, to the Commission for carrying out the duties of the Commission under this Act.

“(ii) WITHDRAWAL AND TRANSFER OF FUNDS.—Upon request of the Commission, the Secretary of the Treasury shall withdraw amounts from the Trust Fund and transfer such amounts to the Commission for use in accordance with clause (i).

“(E) LIMITATION ON TRANSFERS AND WITHDRAWALS.—Except as provided in subparagraph (D)(ii), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subparagraph (A).”

“(5) CONSEQUENCES OF FAILURE TO PAY FEES.—Failure to pay the fees imposed under the schedule established under paragraph (2) shall, subject to regulations promulgated by the Commission, be grounds for revocation of the approval of the Commission of any license required under this Act for the operation of gaming activities.

“(6) CREDIT.—To the extent that revenue derived from fees imposed under the schedule established under paragraph (2) are not expended or committed at the close of any fiscal year, those surplus funds shall be credited to each gaming activity on a pro rata basis against the fees imposed under that schedule for the succeeding fiscal year.

“(7) GROSS REVENUES.—For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, reduced by—

“(A) any amounts paid out as prizes or paid for prizes awarded; and

“(B) allowance for amortization of capital expenditures for structures.”; and

(B) by striking subsection (b) and inserting the following:

“(b) REIMBURSEMENT OF COSTS.—

“(1) CONTENTS OF BUDGET.—For fiscal year 1999, and for each fiscal year thereafter, the budget of the Commission may include a request for appropriations, as authorized by section 15, in an amount equal to the sum of—

“(A)(i) for fiscal year 1999, an estimate (determined by the Commission) of the amount of funds to be derived from the fees collected under subsection (a) for that fiscal year; or

“(ii) for each fiscal year thereafter, the amount of funds derived from the fees collected under subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made; and

“(B) \$1,000,000.

“(2) BUDGET REQUEST OF THE DEPARTMENT OF THE INTERIOR.—Each request for appropriations made under paragraph (1) shall—

“(A) be subject to the approval of the Secretary; and

“(B) be part of a request made by the Secretary to the President for inclusion in the annual budget request submitted by the President to Congress under section 1105(a) of title 31, United States Code.”;

(8) in section 15, as redesignated, by striking “section 18” each place it appears and inserting “section 14”;

(9) by striking section 17 and inserting the following:

“SEC. 16. APPLICATION OF INTERNAL REVENUE CODE OF 1986; ACCESS TO INFORMATION BY STATES AND TRIBAL GOVERNMENTS.

“(a) APPLICATION OF THE INTERNAL REVENUE CODE OF 1986.—

“(1) IN GENERAL.—The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), and 6041, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a compact entered into under section 10 that is in effect, in the same manner as those provisions apply to State gaming and wagering operations. Any exemptions to States with respect to taxation of those gaming or wagering operations shall be allowed to Indian tribes.

“(2) EXEMPTION.—The provisions of section 60501 of the Internal Revenue Code of 1986 shall apply to an Indian gaming establishment that is not designated by the Secretary

of the Treasury as a financial institution pursuant to chapter 53 of title 31, United States Code.

“(3) STATUTORY CONSTRUCTION.—This subsection shall apply notwithstanding any other provision of law enacted before the date of enactment of this Act unless that other provision of law specifically cites this subsection.

“(b) ACCESS TO INFORMATION BY STATE AND TRIBAL GOVERNMENTS.—Subject to section 6(d), upon the request of a State or the governing body of an Indian tribe, the Commission shall make available any law enforcement information that it has obtained pursuant to such section, unless otherwise prohibited by law, in order to enable the State or the Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.

“SEC. 17. GAMING PROSCRIBED ON LANDS ACQUIRED IN TRUST AFTER THE DATE OF ENACTMENT OF THIS ACT.

“(a) IN GENERAL.—Except as provided in subsection (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act, unless—

“(1) those lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act; or

“(2) the Indian tribe has no reservation on the date of enactment of this Act and those lands are located in the State of Oklahoma and—

“(A) are within the boundaries of the former reservation of the Indian tribe, as defined by the Secretary; or

“(B) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in the State of Oklahoma.

“(b) EXEMPTION.—Subsection (a) shall not apply to—

“(1) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled *St. Croix Chippewa Indians of Wisconsin v. United States*, Civ. No. 86-2278; or

“(2) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within 1 mile of the intersection of State road numbered 27 (also known as Krome Avenue) and the Tamiami Trail.”;

“or:

(3) where the use of such lands for gaming purposes is provided for in a tribal-state compact described in section 10(a)(1)(C)(ii)(I) or a tribal-state agreement specifically providing for the use of such lands for gaming purposes.”

(10) by striking section 20;

(11) by redesignating sections 21 through 23 as sections 18 through 20, respectively; and

(12) by redesignating section 24 as section 21.

SEC. 3. LIMITATION ON LOBBYING.

Section 104 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4501) is amended by inserting after subsection (j) the following:

“(k) LOBBYING LIMITATION.—Notwithstanding subsection (j), except as otherwise provided in sections 205 and 207 of title 18, United States Code, a former Federal officer or employee of the United States shall not act as an agent or attorney for, or appear on behalf of, a client in connection with any specific matter or decision involving the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) in any matter in which the officer or

employee of the United States had personal and substantial involvement while an officer of the United States.”.

SEC. 4. DEFINITION OF FINANCIAL INSTITUTIONS.

Section 5312(a)(2) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (Y) and (Z) as subparagraphs (Z) and (AA), respectively; and

(2) by inserting after subparagraph (X) the following new subparagraph:

“(Y) an Indian gaming establishment.”.

SEC. 5. CONFORMING AMENDMENTS.

(a) TITLE 10.—Section 2323a(e)(1) of title 10, United States Code, is amended by striking “section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4))” and inserting “section 4(12) of the Indian Gaming Regulatory Act”.

(b) TITLE 18.—Title 18, United States Code, is amended—

(1) in section 1166—

(A) in subsection (c)(2), by striking “a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect” and inserting “a compact approved by the Secretary of the Interior under section 10(c) of the Indian Gaming Regulatory Act that is in effect or pursuant to procedures issued by the Secretary of the Interior under section 10(a)(2)(B)(iv) of such Act”; and

(B) in subsection (d), by striking “a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act” and inserting “a compact approved by the Secretary of the Interior under section 10(c) of the Indian Gaming Regulatory Act or pursuant to procedures issued by the Secretary of the Interior under section 10(a)(2)(B)(iv) of such Act.”;

(2) in section 1167, by striking “pursuant to an ordinance or resolution approved by the National Indian Gaming Commission” and inserting “pursuant to an ordinance or resolution that meets the applicable requirements under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)”; and

(3) in section 1168, by striking “pursuant to an ordinance or resolution approved by the National Indian Gaming Commission” and inserting “pursuant to an ordinance or resolution that meets the applicable requirements under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)”.

(c) INTERNAL REVENUE CODE OF 1986.—Section 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986 is amended by striking “Indian Regulatory Act” and inserting “Indian Gaming Regulatory Act”.

(d) TITLE 28.—Title 28, United States Code, is amended—

(1) in section 3701(2)—

(A) by striking “section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5))” and inserting “section 4(11) of the Indian Gaming Regulatory Act”; and

(B) by striking “section 4(4) of such Act (25 U.S.C. 2703(4))” and inserting “section 4(10) of such Act”; and

(2) in section 3704(b), by striking “section 4(4) of the Indian Gaming Regulatory Act” and inserting “section 4(10) of the Indian Gaming Regulatory Act”.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 1871. A bill to provide that the exception for certain real estate investment trusts from the treatment of stapled entities shall apply only to existing property, and for other purposes; to the Committee on Finance.

REAL ESTATE INVESTMENT TRUSTS
LEGISLATION

Mr. ROTH, Mr. President, Senator MOYNIHAN and I introduce a bill to limit the tax benefits of so-called "stapled" or "paired-share" Real Estate Investment Trusts ("stapled REITs"). Identical legislation is being introduced in the House of Representatives by Congressman ARCHER.

In the Deficit Reduction Act of 1984 ("1984 Act"), Congress eliminated the tax benefits of the stapled REIT structure out of concern that it could effectively result in one level of tax on active corporate business income that would otherwise be subject to two levels of tax. Congress also believed that allowing a corporate business to be stapled to a REIT was inconsistent with the policy that led Congress to create REITs.

As part of the 1984 Act provision, Congress provided grandfather relief to the small number of stapled REITs that were already in existence. Since 1984, however, almost all the grandfathered stapled REITs have been acquired by new owners. Some have entered into new lines of businesses, and most of the grandfathered REITs have used the stapled structure to engage in large-scale acquisitions of assets. Such unlimited relief from a general tax provision by a handful of taxpayers raises new questions not only of fairness, but of unfair competition, because the stapled REITs are in direct competition with other companies that cannot use the benefits of the stapled structure.

This legislation, which is a refinement of the proposal contained in the Clinton Administration's Revenue Proposals for fiscal year 1999, takes a moderate and fair approach. The legislation essentially subjects to the grandfathered stapled REITs to rules similar to the 1984 Act, but only to acquisitions of assets (or substantial improvements of existing assets) occurring after today. The legislation also provides transition relief for future acquisitions that are pursuant to a binding written contract, as well as acquisitions that already have been announced (or described in a filing with the SEC).

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

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

S. 1871

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

SECTION 1. TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES.

(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984 (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is

a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were 1 entity.

(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

(1) IN GENERAL.—The term "nonqualified real property interest" means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

(A) the acquisition is pursuant to a written agreement which was binding on such date and at all times thereafter on such REIT or stapled entity, or

(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) IMPROVEMENTS AND LEASES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "nonqualified real property interest" shall not include—

(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group, and

(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

(B) LEASES.—Such term shall not include any lease of a qualified real property interest.

(C) TERMINATION WHERE CHANGE IN USE.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

(I) the cost of such property, or

(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

(4) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter, and

(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

(5) QUALIFIED REAL PROPERTY INTEREST.—The term "qualified real property interest" means any interest in real property other than a nonqualified real property interest.

(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this section—

(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding

their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held directly by the exempt REIT or the stapled entity.

(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4),

(B) interests in the entity which are acquired by the exempt REIT or stapled entity in any acquisition described in an agreement, announcement, or filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998, and

(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2), and

(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property. If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term "nonqualified obligation" means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

(A) payments under which would be treated as interest if received by a REIT, and

(B) the rate of interest on which does not exceed an arm's length rate.

(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

(A) which is secured on March 26, 1998, by an interest in real property, and

(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing).

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(4) shall apply for purposes of this subsection.

(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection.

(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

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

(1) REIT GROSS INCOME PROVISIONS.—The term "REIT gross income provisions" means—

(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986, and

(B) section 857(b)(5) of such Code.

(2) EXEMPT REIT.—The term "exempt REIT" means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

(3) STAPLED REIT GROUP.—The term "stapled REIT group" means, with respect to an exempt REIT, the group consisting of—

(A) all entities which are stapled entities with respect to the exempt REIT, and

(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

(4) 10-PERCENT SUBSIDIARY ENTITY.—

(A) IN GENERAL.—The term "10-percent subsidiary entity" means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

(C) 10-PERCENT INTEREST.—The term "10-percent interest" means—

(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation,

(ii) in the case of an interest in a partnership, ownership of 10 percent of the assets or net profits interest in the partnership, and

(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998.

TECHNICAL EXPLANATION

The tax benefits of the stapled real estate investment trust ("REIT") structure were curtailed for almost all taxpayers by section 269B, which was enacted by the Deficit Reduction Act of 1984 ("1984 Act"). The bill limits the tax benefits of a few stapled REITs that continue to qualify under the 1984 Act's grandfather rule.

A REIT is an entity that receives most of its income from passive real-estate related investments and that essentially receives pass-through treatment for income that is distributed to shareholders. In general, a REIT must derive its income from passive sources and not engage in any active trade or business. In a stapled REIT structure, both the shares of a REIT and a C corporation may be traded, and in most cases publicly traded, but are subject to a provision that they may not be sold separately. Thus, the REIT and the C corporation have identical ownership at all times.

OVERVIEW

Under the bill, rules similar to the rules of present law treating a REIT and all stapled entities as a single entity for purposes of determining REIT status (sec. 269B) would apply to real property interests acquired after March 26, 1998, by the existing stapled REIT, or by a stapled entity, or a subsidiary or partnership in which a 10-percent or greater interest is owned by the existing stapled REIT or stapled entity (together referred to as the "REIT group"), unless the real property is grandfathered under the rules discussed below. Different rules would be applied to certain mortgage interests acquired by the REIT group after March 26, 1998, where a member of the REIT group performs services with respect to the property secured by the mortgage.

GENERAL RULES

The bill treats certain activities and gross income of a REIT group with respect to real property interests held by any member of the REIT group (and not grandfathered under the rules described below) as activities and income of the REIT for certain purposes. This treatment would apply for purposes of certain provisions of the REIT rules that depend on the REIT's gross income, including the requirement that 95 percent of a REIT's gross income be from passive sources (the "95-percent test") and the requirement that 75 percent of a REIT's gross income be from real estate sources (the "75-percent test"). Thus, for example, where a stapled entity earns gross income from operating a non-grandfathered real property held by a member of the REIT group, such gross income would be treated as income of the REIT, with the result that either the 75-percent or 95-percent test might not be met and REIT status might be lost.

If a REIT or stapled entity owns, directly or indirectly, a 10-percent-or-greater interest in a subsidiary or partnership that holds a real property interest, the above rules would apply with respect to a proportionate part of the subsidiary's or partnership's property, activities and gross income. Thus, any real property acquired by such a subsidiary or partnership that is not grandfathered under the rules described below would be treated as held by the REIT in the same proportion as the ownership interest in the entity. The

same proportion of the subsidiary's or partnership's gross income from any real property interest (other than a grandfathered property) held by it or another member of the REIT group would be treated as income of the REIT. Similar rules attributing the proportionate part of the subsidiary's or partnership's real estate interests and gross income would apply when a REIT or stapled entity acquires a 10-percent-or-greater interest (or in the case of a previously-owned entity, acquires an additional interest) after March 26, 1998, with exceptions for interests acquired pursuant to agreements or announcements described below.

GRANDFATHERED PROPERTIES

Under the bill, there is an exception to the treatment of activities and gross income of a stapled entity as activities and gross income of the REIT for certain grandfathered properties. Grandfathered properties generally are those properties that had been acquired by a member of the REIT group on or before March 26, 1998. In addition, grandfathered properties include properties acquired by a member of the REIT group after March 26, 1998, pursuant to a written agreement which was binding on March 26, 1998, and all times thereafter. Grandfathered properties also include certain properties, the acquisition of which were described in a public announcement or in a filing with the Securities and Exchange Commission on or before March 26, 1998.

In general, a property does not lose its status as a grandfathered property by reason of a repair to, an improvement of, or a lease of, a grandfathered property. On the other hand, a property loses its status as a grandfathered property under the bill to the extent that a non-qualified expansion is made to an otherwise grandfathered property. A non-qualified expansion is either (1) an expansion beyond the boundaries of the land of the otherwise grandfathered property or (2) an improvement of an otherwise grandfathered property placed in service after December 31, 1999, which changes the use of the property and whose cost is greater than 200 percent of (a) the undepreciated cost of the property (prior to the improvement) or (b) in the case of property acquired where there is a substituted basis, the fair market value of the property on the date that the property was acquired by the stapled entity or the REIT. A non-qualified expansion could occur, for example, if a member of the REIT group were to construct a building after December 31, 1999, on previously undeveloped raw land that had been acquired on or before March 26, 1998. There is an exception for improvements placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

If a stapled REIT is not stapled as of March 26, 1998, or if it fails to qualify as a REIT as of such date or any time thereafter, no properties of any member of the REIT group would be treated as grandfathered properties, and thus the general provisions of the bill described above would apply to all properties held by the group.

MORTGAGE RULES

Special rules would apply where a member of the REIT group holds a mortgage (that is not an existing obligation under the rules described below) that is secured by an interest in real property, where a member of the REIT group engages in certain activities with respect to that property. The activities that would have this effect under the bill are activities that would result in a type of income that is not treated as counting toward the 75-percent and 95-percent tests if they are performed by the REIT. In such cases, all interest on the mortgage and all gross income received by a member of the REIT

group from the activity would be treated as income of the REIT that does not count toward the 75-percent or 95-percent tests, with the result that REIT status might be lost. In the case of a 10-percent partnership or subsidiary, a proportionate part of the entity's mortgages, interest and gross income from activities would be subject to the above rules.

An exception to the above rules would be provided for mortgages the interest on which does not exceed an arm's-length rate and which would be treated as interest for purposes of the REIT rules (e.g., the 75-percent and 95-percent tests, above). An exception also would be available for certain mortgages that are held on March 26, 1998, by an entity that is a member of the REIT group. The exception for existing mortgages would cease to apply if the mortgage is refinanced and the principal amount is increased in such refinancing.

OTHER RULES

For a corporate subsidiary owned by a stapled entity, the 10-percent ownership test would be met if a stapled entity owns, directly or indirectly, 10 percent or more of the corporation's stock, by either vote or value. (The bill would not apply to stapled REIT's ownership of a corporate subsidiary, although a stapled REIT would be subject to the normal restrictions on a REIT's ownership of stock in a corporation.) For interests in partnerships and other pass-through entities, the ownership test would be met if either the REIT or a stapled entity owns, directly or indirectly, a 10-percent or greater interest.

The Secretary of the Treasury would be given authority to prescribe such guidance as may be necessary or appropriate to carry out the purposes of the provision, including guidance to prevent the double counting of income and to prevent transactions that would avoid the purposes of the provision.

By Mr. NICKLES:

S. 1872. A bill to prohibit new welfare for politicians; to the Committee on Commerce, Science, and Transportation.

THE NEW WELFARE FOR POLITICIANS PROHIBITION ACT

Mr. NICKLES. Mr. President, I rise today to introduce legislation that would prohibit the Federal Communications Commission (FCC) from establishing regulations that would compel broadcasters to offer free or reduced cost air time to political candidates.

It is clear that this type of regulation would result in drastic change to current communications and campaign finance law and thus, exceed the regulatory authority of this agency. Absent a legislative directive from Congress, the FCC lacks the authority to require broadcasters to offer free or reduced-cost air time for political candidates.

While in many areas of broadcast regulation, the FCC does possess broad authority to change its regulation to reflect what is within the public interest, that authority has always been specifically granted by an act of Congress. This broad authority does NOT extend to the regulation of political broadcasting.

The Communications Act clearly mandates, with respect to candidate appearances on broadcasting stations, certain specific requirements for FCC to enforce on broadcasters for political candidates. The law requires broad-

casters to provide candidates with equal opportunities, ensure that there is no censorship of political messages, and provide "reasonable access" to federal candidates. As for media rates, the Act specifically states that when candidates buy air time, they will be accorded a stations' "lowest unit charge" for the same class and amount of time.

It seems quite clear that Congress' inclusion of these specific provisions indicates that in the area of political broadcasting, especially for rates charged for advertising, the FCC does not have the authority to rewrite the Communications Act and impose a free political time requirement which is inconsistent with Congress' specific statement on this issue.

Any attempt to affect campaign finance reform through overreaching FCC regulations rather than through the legislative process, regardless of good intentions, is wrong. Any changes or revisions to the campaign finance or communication laws should be made by the people through their elected representatives and not by non elected federal bureaucrats. New regulations from the FCC would further involve the government in protected political speech areas and create a patchwork of agency regulations without any consistent overall reform.

Mr. President, during the 105th Congress this body has thoroughly debated campaign reform and free air time for political candidates. Clearly there is not enough support in this body to pass legislation that includes the free air time provisions. This legislative defeat does not give the FCC Chairman the authority, even with direction from the President, to issue regulations giving candidates free time and mandate or bribe the nation's broadcasters to abide by these regulations. Again, if this type of reform is to be implemented, it requires legislative action by Congress. It is not appropriate for a federal agency to mandate this comprehensive reform by regulatory action.

The Constitution is very clear. Article I, Section 1 of the Constitution vests in Congress all power to "make laws which shall be used necessary and proper for carrying into Execution the foregoing Powers * * *". Nowhere in the Constitution is the Executive Branch vested with the power to make the law. The framers of the Constitution understood the threat to our freedom which could be posed by an all-powerful executive branch. This principle is as valid today as it was when they drafted the Constitution. Any proposed regulations by the FCC which would require broadcasters to give free or reduced-cost air time to federal political candidates raises serious constitutional concerns.

This is not the first time that the Clinton administration has tried to bypass Congress and legislate by Executive order. They have attempted to do this on several occasions. And I think they have done so knowing full well they could not get their desired objective through Congress.

Let me remind the FCC, that if this type of regulatory action is taken by

this agency, I will lead the effort in the Senate to defeat the regulation. The Congressional Review Act, gives Congress the ability to disapprove regulations, when a simple majority believes that the regulation is inappropriate.

Every member of this body, Democrats and Republicans, should reject this approach. We should uphold and protect this institution, the legislative branch, and the constitution.

And so, Mr. President, I have warned the White House that I am willing to use any appropriate tools at our disposal to stop this egregious abuse of power. I will do what I can to stop the proposed FCC regulations on air time for political candidates. And I will do what I can to block any other attempts by this administration to legislate by executive action. It is my intention to use everything in my power to protect this institution. I am hopeful that my colleagues will join me in this effort.

ADDITIONAL COSPONSORS

S. 460

At the request of Mr. BOND, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 460, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes.

S. 1002

At the request of Mr. ABRAHAM, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 1002, a bill to require Federal agencies to assess the impact of policies and regulations on families, and for other purposes.

S. 1133

At the request of Mr. THURMOND, his name was added as a cosponsor of S. 1133, a bill to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses and to increase the maximum annual amount of contributions to such accounts.

S. 1251

At the request of Mr. D'AMATO, the names of the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1252, a bill to amend the